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Reversed Judge Davis —
Miller & Wait
14 Wall 63
Dec 7 1871

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~100.~~ 49

JOHN M. YOUNG, APPELLANT,

vs.

THE STEAMBOAT KEY CITY AND BARGE JIM SHEETS, THE NORTHWESTERN UNION PACKET COMPANY, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED JANUARY 4, 1871.

Dec. 9. 1871

SUPREME COURT OF THE UNITED STATES.

No. 460.

JOHN M. YOUNG, APPELLANT,

vs.

THE STEAMBOAT KEY CITY AND BARGE JIM SHEETS, THE NORTHWESTERN UNION PACKET COMPANY, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

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1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district, on the first Monday (being the third day) of October, A. D. 1870—

Present, the Honorable Thomas Drummond, circuit judge, presiding; Charles S. Hamilton, marshal; Edward Kurtz, clerk—

Among other, the following proceedings were had, to wit:

JOHN M. YOUNG, LIBELLANT,
vs.
STEAMBOAT KEY CITY, HER ENGINES, BOILERS, machinery, boats, tackle, apparel, and furniture, and Barge Jim Sheets, The Northwestern Union Packet Company, claimant. } Appeal in admiralty.

Be it remembered that, heretofore, to wit, on the 29th day of October, A. D. 1869, a certified copy of record in said cause in the district court of the United States for the district of Wisconsin, was received from the clerk of said court and filed in the clerk's office of this court,

2 as follows, to wit:

Certified copy of record from district court.

District court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the thirteenth day) of September, A. D. 1869—

Present, the Honorable Andrew G. Miller, judge of said court, presiding; C. S. Hamilton, marshal; J. M. Miller, clerk—

Among other, the following proceedings were had, to wit:

JOHN M. YOUNG
vs.
STEAMBOAT KEY CITY, HER ENGINES, BOILERS, machinery, boats, tackle, apparel, and furniture, and Barge Jim Sheets. } Admiralty.

Be it remembered that, heretofore, to wit, on the 22d day of November, A. D. 1867, came John M. Young, the said libellant, by his proctors, Messrs. Emmons & Van Dyke, and presented to the court his libel against the Steamboat Key City, her engines, boilers, machinery, boats, tackle, apparel, and furniture, and Barge Jim Sheets, which libel is as follows:

3 *Libel.*

In admiralty.

To the judge of the district court of the United States for the district of Wisconsin:

John M. Young, of Montreal, Canada East, exhibits this his libel against the Steamboat called the "Key City," whereof Laughton is, or lately was, master, and C. H. McArthur is, or lately was, clerk, her boilers, engines, machinery, boats, tackle, apparel, and furniture, and Barge Jim Sheets, in a cause of contract, civil and maritime. And thereupon the said libellant doth allege and articulately propound as follows, to wit:

First. That the said steamboat, now lying at , in the district aforesaid, is of more than twenty tons burthen, and at the time when the cause of action hereinafter stated and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places, in different States of the United States, upon the Mississippi River and its tributaries, navigable from the sea, and then had appurtenant as part of her carrying capacity in her said business the barge "Jim Sheets."

Second. That, on or about the nineteenth day of May, A. D. 1864, the said steamboat, with said cargo, appurtenant and in tow, whereof the said W. H. Laughton was master, and C. H. McArthur, clerk, was

4 then lying at the port of Wabasha, in the State of Minnesota, and designed on a voyage upon the Mississippi River aforesaid, from the port of Wabasha aforesaid to the port of Prairie du Chien, in the State of Wisconsin, within the admiralty and maritime jurisdiction of this honorable court, the libellant being the owner of four thousand nine hundred and eighty-seven bushels of wheat, of the value of $6,333 49, or one dollar and twenty-seven cents per bushel. W. H. Robson & Co., the agents of said libellant, in that behalf shipped on board of said barge his said wheat, in good order and condition, to be carried and transported by said steamboat and barge from Wasbasha aforesaid to Prairie du Chien aforesaid, and there to be delivered in like good order and condition unto John Conger, to be reshipped to William Young, of Milwaukee, in the State of Wisconsin, the unavoidable dangers of the river and fire only excepted, in consideration of certain freight and charges, to be paid upon delivery of said wheat to said consignee; that the said libellant, by his said agents, received upon the shipment aforesaid of said wheat a bill of lading, receipt, and contract therefor, and for the transportation thereof, signed by C. H. McArthur, the then clerk of said steamboat, which is hereto annexed, marked Exhibit "A,"

5 and thereby made a part hereof.

Third. That the said steamboat shortly afterwards departed on her said voyage with said barge in tow with said wheat on board, but the said master as aforesaid, not regarding his duty in that respect, nor his undertaking to safely transport and deliver the said wheat as aforesaid, did not so convey and deliver the same, although no unavoidable dangers of the river, or fire, prevented him from so doing; but on the contrary thereof by reason of the unseaworthiness of said steamboat and barge, and the unskillfulness, mismanagement, and carelessness of the said master, and the carelessness, negligence, and improper conduct of the said master, and his mariners, and his servants under him, the said barge, on or about the 20th day of May, A. D. 1864, was sunk in the Mississippi River while on the voyage aforesaid, and a part of said wheat on board of said barge became wetted, damaged, and wholly lost

to the libellant, and the remainder of said cargo, not so lost, the said master, has failed to deliver; and, as this libellant is informed and believes the owners of said steamboat and barge appropriated to their own use the portion of said cargo of wheat which was not lost on the voyage aforesaid, by reason whereof the libellant sustained damages to the
6 amount of six thousand three hundred and thirty-three $\frac{49}{100}$ dollars, for which he claims reparation in this suit.

Fourth. That all and singular the premises are true. Wherefore the libellant prays that process in due form of law may issue against the said steamboat Key City, her engines, boilers, machinery, boats, tackle, apparel, and furniture, and said barge "Jim Sheets;" and that this honorable court will pronounce for his aforesaid demand of six thousand three hundred and thirty-three $\frac{49}{100}$ dollars, and decree the same to be paid with interest from the twentieth day of May, A. D. 1864, besides costs, & for such other relief in the premises as to right and justice may appertain.

JOHN M. YOUNG,
By EMMONS & VAN DYKE, *Proctors.*

EMMONS & VAN DYKE, *Proctors.*

EXHIBIT A.—*Referred to as annexed.*

[Storage, forwarding and commission merchants, dealers in produce, Wabasha, Minnesota.]

Shipped by W. H. Robinson & Co., in apparently good order or condition, noted on account and risk of whom it may concern, on board the good steamboat called "Key City," whereof Laughton is master, now lying at the port of Wabasha, the property described below, which is to be delivered without delay in like condition, (the unavoidable
7 dangers of the river and fire only excepted,) unto John Conger at Pr. du Chien, or assigns, he or they paying freight on the same at the rate of 25 cents per bushel, privilege lighting, towing, & reshipping.

In witness whereof the agent of said boat hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Wabasha, May 19th, 1864.

Consigned to William Young, Milwaukee, for account of W. H. Robinson, Wabasha.

Marks.	Lot No.	Articles.	Weight.
		Barge Jim Sheets: 4,987 bu. wheat, more or less.....	

C. H. McARTHUR, *Clk.*

DISTRICT OF WISCONSIN, *ss:*

On this 22d day of November, 1867, appeared Alexander McDonald Young, who, being duly sworn, says that he is the agent of the libellant; that said libellant does not reside within said district, and is not now in said district; that affiant is more familiar with matters and things al-

leged in said libel than said libellant, and verily believes the
8 said libel to be true.

A. McD. YOUNG.

Sworn & subscribed to this 22nd day of November, A. D. 1867.
J. M. MILLER,
Clerk U. S. Dis't Court, Wisconsin.

Whereupon libellant filed his stipulation, which is as follows:

9 District court of the United States for the district of Wisconsin.

Whereas a libel was filed in this court on the twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by John M. Young, against the Steamboat Key City, her boats, engines, &c., and Barge Jim Sheets, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue against steamboat & barge, and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the libellant or his surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and they are, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above-named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

JOHN M. YOUNG.
Pr'p'r A. McD. YOUNG.
A. McD. YOUNG.

Taken and acknowledged this 22d day of November, 1867, before me.
J. M. MILLER,
U. S. Commissioner.

DISTRICT OF WISCONSIN, *ss:*

Alex. McD. Young, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

A. McD. YOUNG.

Sworn to this 22d day of November, 1867, before me.
J. M. MILLER,
U. S. Commissioner.

10 Whereupon it is ordered by the court that process issue to the marshal, returnable on the fifteenth day of December next at eleven o'clock in the forenoon, and that this court on that day will proceed to the trial and hearing thereof; and it is further ordered that notice be given by advertisement in the Daily Milwaukee News, a paper published in the city of Milwaukee, and by notices posted in the most public manner, at and near the place of trial, for at least six days.

Whereupon a monition issued as follows:

11 DISTRICT OF WISCONSIN, *ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the district court of the United

States for the district of Wisconsin, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by John M. Young against the Steamboat Key City, her engine, machinery, boats, tackle, apparel, and furniture, and the Barge Jim Sheets, for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat & barge or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and, all proceedings being had, that the said steamboat, barge or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said steamboat, barge or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should *ont* be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin, on the fifteenth day of December next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the 92d.

J. M. MILLER, *Clerk.*

EMMONS & VAN DYKE,
Proctors for Libellants.

Return.

Monition returned. The within-named Steamboat Key City and Barge Jim Sheets not found in this district.

CASSIUS FAIRCHILD,
U. S. Marshal.

APRIL 3RD, 1868.

This day came the libellant, by his proctors, Messrs. Emmons & Van Dyke, and filed his præcipe for alias monition.

Whereupon it is ordered by the court that process issue to the marshal, returnable on the first day of May next, at eleven o'clock in the forenoon, and that this court will, on that day, proceed to the trial and hearing thereof; and it is further ordered that notice be given by advertisement in the Daily Milwaukee News, a paper published in the city of Milwaukee, and by notices posted in the most public manner at and near the place of trial, for at least six days.

Whereupon an alias monition issued as follows:

13 DISTRICT OF WISCONSIN, *ss:*

SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the district court of the United

States, for the district of Wisconsin, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-seven by John M. Young, against the Steamboat Key City, her boilers, engines, machinery, boats, tackle, apparel, & furniture, and the Barge Jim Sheets, for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in said steamboat & barge or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and, all proceedings being had, that the said steamboat & barge or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded, as heretofore commanded, to attach the said steamboat, barge, or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should *ont* be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin, on the first day of May next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the honorable Andrew G. Miller, Judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this third day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the 92nd.

J. M. MILLER, *Clerk.*

EMMOMS & VAN DYKE,
Proctors for Libellant.

14 *Return to alias monition.*

In obedience to the within precept, I have this seventh day of April, A. D. 1868, attached the steamboat Key City, her engines, machinery, boats, tackle, apparel and furniture at La Crosse, and have given due notice by posting notices to all persons claiming the same, that this court will, on the first day of May next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim shall be interposed for the same, and that they make their allegation in that behalf.

CASSIUS FAIRCHILD, *Marshal.*
By HOWARD CRAMER, *Deputy.*

Claimant's stipulation.

APRIL 8, 1868.

This day came the Northwestern Union Packet Company, claimant of said steamboat Key City, &c., and presented a stipulation as follows:

15 District court of the United States, for the district of Wisconsin.
In admiralty.

Whereas, a libel was filed on the day of in the year of our Lord one thousand eight hundred and by John M. Young

against the Steamboat Key City, her engines, &c., and Barge Jim Sheets for the reasons and causes in the said libel mentioned; and whereas the said steamer Key City is now in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from the monition now on file in said court:

Appearing personally the Northwestern Union Packet Company, represented by Peyton S. Davidson, superintendent, as the claimant of the said steamer, and produced for sureties and the said submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of thirteen thousand dollars unto the said John M. Young, that the said shall abide and answer the decree of the said court in the aforesaid cause, and unless shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above-mentioned.

The Northwestern Union Packet Co.,

By P. S. DAVIDSON,
Superintendent.

Taken and acknowledged, this eighth day of April, 1868, before me

U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

part to the above stipulation, being duly sworn depose and say that worth the sum of dollars over and above all just debts and liabilities.

Sworn to this day of 18 , before me.

U. S. Commissioner, Wisconsin.

16 And said stipulation is endorsed as follows:

Agreement.

The libellant hereby consents that the steamboat Key City be released from the custody of the marshal upon filing this bond, the claimant herein named hereby agreeing within fifteen days to file a good and sufficient bond with sureties, according to the rules and practice of the court, or in default, said steamboat shall be subject to arrest.

Dated, April 9, 1868.

EMMONS & VAN DYKE,
Proctors for Libellant.
J. W. & A. L. CARY,
Proctors for Claimant.

Whereupon a warrant of restitution issued as follows:

17 DISTRICT OF WISCONSIN, *ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin, on the twenty-second day of No-

vember, in the year of our Lord one thousand eight hundred and sixty-seven, by John M. Young against The Steamboat Key City, her boiler, engine, machinery, boats, tackle, apparel, & furniture, and Barge Jim Sheets, praying that the same may be condemned as forfeited to the said libellant; and whereas the said steamboat Key City, her boilers, &c., and barge Jim Sheets has been attached by the process of the said court in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas, also, a claim has been interposed and filed in said court by The Northwestern Union Packet Company, and such proceedings have been thereupon had that, by the sentence and decree of said court in this cause, made and pronounced on the ninth day of April, eighteen hundred and sixty-eight, in pursuance of stipulation of counsel endorsed on claimant's stipulation, the said steamboat Key City, her engines, &c., and barge Jim Sheets, was adjudged to belong as claimed, and was ordered to be restored to the said claimant: Therefore you, the said marshal, are hereby commanded to release the said steamboat Key City, her engines, &c., and barge Jim Sheets from arrest, and to deliver and return the same unto the said Northwestern Union Packet Company.

And what you have done in the premises do you make return thereof before the said court of admiralty on the first day of May next, at ten o'clock in the forenoon of said day if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this ninth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of these United States the 92d.

J. M. MILLER, *Clerk.*

18 *Return to warrant of restitution.*

In obedience to this warrant I have, this 9th day of April, released the steamboat Key City from arrest as commanded.

Service $2 00.

CASSIUS FAIRCHILD,
U. S. Marshal.

APRIL 20, 1868.

This day came The Northwestern Union Packet Company, according to the stipulation and endorsement thereon filed on the 8th of April, 1868, as claimant of said steamboat Key City, &c., and presented its stipulation as follows:

19 District court of the United States for the district of Wisconsin.
In admiralty.

Whereas a libel was filed on the twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by John M. Young against The Steamboat Key City, her boilers, &c., and Barge Jim Sheets, for the reasons and causes in the said libel mentioned; and whereas the said steamboat Key City is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, as appears from the monition now on file in said court:

Appearing personally The Northwestern Union Packet Company, as

the claimant of the said steamboat Key City, and produced for surety William F. Davidson; and the said Northwestern Union Packet Company and William F. Davidson, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of thirteen thousand dollars unto the said John M. Young, that the said Northwestern Union Packet Company and William F. Davidson shall abide and answer the decree of the said court in the aforesaid cause, and unless they shall so do they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

Northwestern Union Packet Co.
W'M F. DAVIDSON, *Pres't.* [SEAL.]
W'M F. DAVIDSON.

Taken and acknowledged this 17th day of April, 1868, before me.
[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court Dist. Minnesota.

DISTRICT OF MINNESOTA, *ss:*

William F. Davidson, for himself, and also for The Northwestern Union Packet Company, of which he is president, parties to the above stipulation, being duly sworn, deposes and says for himself & said company that each is severally worth the sum of thirteen thousand dollars over and above all their or either of their just debts and liabilities.
W'M F. DAVIDSON.

Sworn to this 17th day of April, 1868, before me.
[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court, Dist. of Minnesota.

And same day came said claimant and filed stipulation for costs, to wit:

20 District court of the United States for the district of Wisconsin.
In admiralty.

Whereas a libel was filed on the twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by John M. Young against The Steamboat Key City, her boilers, &c., and Barge Jim Sheets, for the reasons and causes in the said libel mentioned; and whereas the said steamboat Key City is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, as appears from the monition now on file in said court:

Appearing personally The Northwestern Union Packet Company as the claimant of the said steamboat Key City, and produced for surety William F. Davidson; and the said Northwestern Union Packet Company and William F. Davidson submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators in the sum of two hundred and fifty dollars unto the said John M. Young, that the said Northwestern Union Packet Company and William F. Davidson shall abide and answer the decree of the said court in the aforesaid cause as to costs, and unless they shall so do they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels,

lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

Northwestern Union Packet Co.
W'M F. DAVIDSON. *Pres't.* [SEAL.]
W'M F. DAVIDSON.

Taken and acknowledged this 17th day of April, 1868, before me.
[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court, Dist. of Minnesota.

DISTRICT OF MINNESOTA, *ss.:*

William F. Davidson, for himself, and also for The Northwestern Union Packet Company, of which he is president, parties to the above stipulation, being duly sworn, deposes and says for himself & for said company that each is severally worth the sum of two hundred and fifty dollars over and above all their or either of their just debts and liabilities.

W'M F. DAVIDSON.

Sworn to this 17th day of April, 1868, before me.
H. E. MANN,
Clerk U. S. Circuit Court, Dist. of Minnesota.

Answer.

APRIL 3D, 1869.

This day came the claimants, by their proctors, Messrs. J. W. & A. L. Cary, and filed their answer, as follows:

21 *Answer.*

In admiralty.

To the judge of the district court of the United States for the district of Wisconsin:

The answer of the Northwestern Union Packet Company, owner and claimant of the steamboat Key City and barge Jim Sheets, to the libel of John M. Young against the said steamboat and barge.

And now comes the Northwestern Union Packet Company, owner of the said steamboat Key City and barge Jim Sheets, and, for answer to the libel of John M. Young against the said steamboat and barge, doth allege and propound as follows, to wit:

First. That the said Northwestern Union Packet Company is the true and bona fide owner of the said steamboat Key City and barge Jim Sheets, and that no other person or persons, corporation or corporations, is or are the owner or owners thereof.

Second. That the first article of said libel is true.

Third. Said respondent admits, upon information and belief, that the second article of said libel is substantially true, except the allegation that the four thousand nine hundred and eighty-seven bushels of wheat mentioned in said article was of the value of $6,333 49, or one dollar and twenty-seven cents per bushel, and as to this allegation the said respondent has no knowledge or information sufficient to form a belief, and leaves said libellant to make such proof in reference thereto as he may be advised.

Fourth. Said respondent, answering the third article of said
22 libel, admits, upon information and belief, that the said steam-

boat shortly afterwards departed on her said voyage, with said barge in tow, with said wheat on board; and further admits, upon information and belief, that the said master of said steamboat did not convey said wheat, except as hereinafter stated, and did not deliver the same, as provided by said bill of lading; but denies, upon information and belief, that the said master, in failing to deliver said wheat as provided by said bill of lading, did not regard his duty in that respect, or his undertaking to safely transport or deliver the said wheat, as aforesaid, or that no unavoidable dangers of the river prevented him from so doing. Said respondent further admits, upon information and belief, that, on or about the 20th day of May, A. D. 1864, the said barge was sunk in the Mississippi River while on the voyage aforesaid, and that a part or the whole of the wheat on board of said barge become wetted, damaged, and wholly lost; but said respondent denies, upon information and belief, that the sinking of said barge and the loss of said wheat was by reason of the unseaworthiness of said steamboat or barge, or the unskillfulness, mismanagement, or carelessness of the said master, or the carelessness, negligence, or improper conduct of the said master, his mariners or servants under him. That as to whether the owners
23 of said steamboat and barge appropriated to their own use the portion of said cargo of wheat which was not lost on the voyage aforesaid, or whether by reason of the matters complained of in said libel the said libellant has sustained damage to the amount of six thousand three hundred and thirty-three $\frac{49}{100}$ dollars, said respondent has no knowledge or information sufficient to form a belief, and therefore leaves said libellant to make such proof thereof as he may be advised.

Fifth. Said respondent, further answering said libel, doth allege and propound, upon information and belief, that, on or about the 19th day of May, A. D. 1864, the said steamboat Key City, which was then owned and run by the Northwestern Packet Company, was on her regular downward voyage on the Mississippi River, from St. Paul, in the State of Minnesota, to Dunleith, in the State of Illinois; that, on or about the day last aforesaid, said steamboat being then tight, staunch, strong, and well and sufficiently manned and equipped, and in every respect fit to perform the voyage upon which she was designed, at Wabasha, in the State of Minnesota, took in tow the said barge Jim Sheets, laden with about four thousand nine hundred and eighty-seven bushels of wheat, for the purpose of towing her and her said cargo to Prairie du Chien, in the State of Wisconsin; that said barge, at the time she
24 was taken in tow by the said steamboat, as aforesaid, was owned and run by the said Northwestern Packet Company, and was then tight, staunch, and strong, and well and sufficiently manned and equipped, and in every respect fit to perform the voyage upon which she was designed, and continued to be so until the time of the accident hereinafter mentioned; that said steamboat and barge proceeded on their said voyage without accident until at or about two o'clock in the morning of the 20th day of May, A. D. 1864, at which time they reached the first crossing in said river below Chimney Rock, so called, at which time the said steamboat and barge were in the regular channel of said river, and properly manned and equipped, and with a licensed and competent pilot at the wheel, and that the officers and crew of said steamboat were on duty at their several posts, and that said barge was fastened to said steamboat, on her larboard side, in the usual and proper manner; that said steamboat and barge, being at the first crossing in said river below Chimney Rock, so called, at the time and in the

M. Young resides in Montreal, and I acted as his agent for the purchase of the property, and I did purchase and store it in Robson's warehouse for his account. It should take, I think, two days to transport wheat from Wabasha to Prairie du Chien, and in the ordinary course it should have reached Prairie du Chien about the 21st May, '64. I can't say what the grade of this wheat was, as it was not inspected; there is no regular inspection until it reaches Prairie du Chien, but it was bought as No. 1. That year there was no trouble about inspection. All the wheat that year grew good and I think there would have been no question about this.

Ques. Not knowing the grade of this wheat, how are you able to determine its value by reference to your price current?

30 Ans. Partially by sales of shipments from same purchases from same house, and bought at the same time, and the fact that all the wheat that year was good or generally good. That is all.

Ques. Do you know the value of this wheat at Prairie du Chien at or about the time it should have reached there in the regular course of transportation?

(Objected to by libellant's counsel as immaterial, Prairie du Chien not being the port of destination by the terms of the bill of lading.)

Ans. No. Its value at Prairie du Chien would, I should think, be less than here, though I have known it to sell higher there than here. That place is not a market for wheat, the value would be only the difference in freight between Prairie du Chien & Milwaukee. I don't know what that is.

Ques. Will you turn to your price current and tell us what the value of that wheat would have been in Milwaukee on the 21st May.

Ans. $1 27 per bushel.

Ques. What on the 23d of May?

Ans. $1 25 to $1 25¼. On the 24th it fluctuated from $1 27 to $1 25. On the 25th from $1 27 to $1 26.

Ex'n resumed:

The price gradually increased from the 25th of May into June.

W'M YOUNG.

Subscribed & sworn to before me this 12th day of August, 1869.

EDW. KURTZ,
U. S. Com'r, Wis.

31 RESPONDENT'S TESTIMONY.

Bill of sale.

[Two ten (10) dollar int. rev. stamps cancelled.)

To all to whom the' presents shall come, greeting:

Know ye, that the "Northwestern Packet Company," a corporation organized in the State of Iowa, owner of the steamer or vessel called the "Key City," of the burden of 303$\frac{88}{100}$ tons, or thereabouts, for and in consideration of the sum of twenty ($20,000) thousand dollars, lawful money of the United States of America, to it in hand paid before the ensealing and delivery of these presents, by the Northwestern Union Packet Company, a transportation company formed under the general incorporation laws of the State of Iowa, the receipt whereof it does hereby acknowledge, has granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Northwestern Union

Packet Company all of said steamer or vessel, together with its engines and machinery, the masts, bowsprit, sails, boats, anchors, cables, tackle, apparel, furniture, and all other necessaries thereunto appertaining and belonging. The certificate of the enrollment of which said steamer or vessel is as follows:

Enrollment. [No. 5.

In conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or 32 vessels," &c., passed the 18th February, 1793; and "An act to regulate the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, and for other purposes," passed the 2d March, 1831; and "An act to provide for the better security of the lives of passengers on board vessels propelled in whole or in part by steam," passed 7th July, 1838; George A. Blanchard, secretary of the Northwestern Packet Company, having taken and subscribed the oath required by the said acts, and having sworn that the vessel hereinafter named is owned by different persons in shares as stockholders by the name and style of the Northwestern Packet Company, whereof George A. Blanchard is secretary, and that said stockholders are citizens of the United States, sole owner of the ship or vessel called the "Key City," whereof W. H. Lawton is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Cincinnati, Ohio, in the year 1857, as appears by the certificate of enrollment, dated & issued at Galena, March 26th, 1858.

Permanent. And having certified that the said ship or vessel has one deck and no mast, and that her length is $223\frac{7}{10}$ feet, her breath $36\frac{2}{10}$ feet, her depth $5\frac{4}{10}$ feet, and that she measures 303 tons and 88 hundredths; that she is a steamer, has a transom stern, and no 33 figure head. And the said George A. Blanchard having agreed to the description and admeasurement above specified, and sufficient security having been given in conformity with the terms of the said acts, the said steamer has been duly enrolled at the port of Dubuque, Iowa.

Given under my hand and seal of office at the port of Dubuque, Iowa, this 10th day of July, in the year one thousand eight hundred and sixty-5.

[SEAL.] J. B. HENION,
Surveyor.

To have and to hold the said steamer or vessel, and appurtenances thereunto belonging, unto it the said Northwestern Union Packet Company, to the sole and only proper use, benefit, and behoof of it, the said "Northwestern Union Packet Company," forever; and it, the said Northwestern Packet Company, has, and by these presents does, promise, covenant, and agree, for itself and assigns, to and with the said Northwestern Union Packet Company and assigns, to warrant and defend the said steamer or vessel, and all the other before-mentioned appurtenances, against the lawful claims and demands of all and every person or persons whomsoever, and that it has good right and authority to sell and dispose of the same in manner aforesaid.

In testimony whereof, the said Northwestern Packet Company

34 has, by its president and secretary executed these presents at Dubuque, Iowa, this first day of May, one thousand eight hundred and sixty-six.

J. LAWLER, [SEEL.]
Pres't N. W. P'k't Co. [SEAL.]
GEO. A. BLANCHARD, [SEAL.]
Sec'y Northwestern Packet Co. [SEAL.]

Sealed and delivered in presence of—
[SEAL.]

STATE OF IOWA, *Dubuque County, ss:*

This is to certify that John Lawler and George A. Blanchard this day personally appeared before the undersigned, a notary public within and for the county aforesaid, and severally acknowledged that they had executed the above bill of sale in their capacities of president and secretary of the Northwestern Packet Company, for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Dubuque, this 13th day of August, A. D. 1866.

[SEAL.] EDW'D SAWYER,
Notary Public.

[Five-cent rev. stamp, cancelled.]

(Indorsed:) Bill of sale from Northwestern Packet Company to Northwestern Union Packet Company. Steamer "Key City."

Rec'd for recording Sept. 21st, 1866. Recorded on page 142, '3, '4 of book A, custom-house, Dubuque. Sept. 22, 1866.

Per C. A. G.

35 *Bill of sale.*

[Five $1 00 int. rev. stamps cancelled.]

To all to whom these presents shall come, greeting:

Know ye that the Northwestern Packet Company, a corporation organized in the State of Iowa, and owner of the barge or vessel called the Jim Sheets, of the burden of $134\frac{67}{100}$ tons, or thereabouts, for and in consideration of the sum of four thousand ($4,000) dollars, lawful money of the United States of America, to it in hand paid before the ensealing and delivery of these presents, by the Northwestern Union Packet Company, a transportation company formed under the general incorporation laws of the State of Iowa, the receipt whereof it does hereby acknowledge, has granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Northwestern Union Packet Company, and assigns, all of said barge or vessel, together with the mast, bowsprit, sails, boat, anchors, cable, tackle, apparel, furniture, and all other necessaries thereunto appertaining and belonging. The certificate of the enrollment of which said barge or vessel, is as follows:

Enrollment. [No. 20.

In conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels, &c.," passed the 18th February, 1793; and "An act to regulate the foreign

and coasting trade on the northern, northeastern, and north-
36 western frontiers of the United States, and for other purposes," passed the 2d March, 1831; and "An act to provide for the better security of the lives of passengers on board vessels propelled in whole or in part by steam," passed 7th July, 1838; George N. Blanchard, sec'y of the Northwestern Packet Company, having taken and subscribed the oath required by the said acts, and having sworn that the vessel herein named is owned by the Northwestern Packet Company, citizen of the United States, sole owner of the vessel called the barge Jim Sheets, of , whereof , is at present master, and as he hath citizen of the United States, and that the said ship or vessel was built at , in the year 18 . appears by ; and D. W. Hewitt and John G. Potts having certified that the said ship or vessel has one deck and no mast, and that her length is 131 $\frac{9}{10}$ feet, her breadth 19 $\frac{6}{10}$ feet, her depth 3 $\frac{8}{10}$ feet, her height $\frac{}{10}$ feet, and that she measures 68 tons and 14 hundredths, ninety-fifths; that she is a barge; has and head.

Permanent.

Where surrendered. Dubuque.

Date of surrender; 10th day of July, 1866.

And the said George A. Blanchard having agreed to the description and admeasurement above specified, and sufficient security having been given, in conformity with the terms of the said acts, the said barge Jim Sheets has been duly enrolled at the port of Dubuque.

Cause of surrender; change of owners.

37 Given under my hand and seal of office, at the port of Dubuque, this 10th day of July, in the year one thousand eight hundred and sixty-five.

[SEAL.] J. B. HENION, *Surveyor.*

To have and to hold the said barge or vessel and appurtenances thereunto belonging, unto it, the said Northwestern Union Packet Company and assigns to the sole and only proper use, benefit, and behoof of it, the said Northwestern Union Packet Company and assigns forever; and it, the said Northwestern Packet Company, has, and by these presents does, promise, covenant, and agree, for itself and assigns, to and with the said Northwestern Union Packet Company and assigns, to warrant and defend the said barge or vessel, and all the other beforementioned appurtenances, against the lawful claims and demands of all and every person or persons whomsoever; and that it has good right and authority to sell and dispose of the same in manner aforesaid.

In testimony whereof the said Northwestern Packet Company has, by its president and secretary, executed these presents at Dubuque, Iowa, this first day of May, one thousand eight hundred and sixty-six.

J. LAWLER, [SEAL.]
Pres't N. W. P'k't Co. [SEAL.]
GEORGE A. BLANCHARD, [SEAL.]
Sec'y Northwestern Packet Co. [SEAL.]

Sealed and delivered in presence of—
[SEAL.]

38 STATE OF IOWA, *Dubuque County, ss:*

This is to certify that John Lawler and George A. Blanchard this day personally appeared before the undersigned, a notary public

within and for the county aforesaid, and severally acknowledged that they had executed the above bill of sale in their capacities of president and secretary of the Northwestern Packet Company for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Dubuque, this 13th day of August, A. D. 1866.

[SEAL.] EDW'D SAWYER, *Notary Public.*

[5-ct. int. rev. stamp cancelled.]

(Indorsed:) Bill of sale. From Northwestern Packet Co. to Northwestern Union Packet Company. Barge Jim. Sheets.

COLLECTOR'S OFFICE.

Filed for record on the 21st day of Sept., A. D. 1866, at 4 o'clock p. m., and recorded in book A of folio , the custom-house , on page 206, 207, 208.

JOHN B. HENION,
Surveyor of Customs.
Per C. A. G.

And now at this same term, to wit, September term, A. D. 1869, and on the first day thereof, to wit, on the thirteenth day of September, 1869, the following proceedings were had, to wit:

Decree.

JOHN M. YOUNG
vs.
STEAMBOAT KEY CITY, HER ENGINES, BOILERS, machinery, boats, tackle, apparel, and furniture, and Barge Jim Sheets, The Northwestern Union Packet Company, claimant.

This day came the parties, by their proctors; and, on consideration of the pleadings, and proofs, and arguments thereon, it is ordered, adjudged, and decreed by the court that this libel be, and hereby is, dismissed at the costs of the libellant.

And it is further ordered, adjudged, and decreed by the court that the said libellant and Alex. McD. Young, his stipulator, pay the costs of this suit and proceeding, taxed at eighty-three dollars and eighty cents, within ten days, or in default thereof an execution be issued for the same.

Appeal prayed for.

A. G. MILLER.

Decree signed, recorded, &c., September 13, 1869.

J. M. MILLER, *Clerk.*

Appeal.

SEPTEMBER 28, 1869.

This day came the libellant, by his proctors, and prayed the court for an appeal to the circuit court of the United States for the district of Wisconsin.

40 Whereupon it is ordered by the court that an appeal be allowed

as of the thirteenth day of September instant, upon the libellant giving bond in the penalty of five hundred dollars, with sureties to be approved by the judge of this court.

And this day (September 28, 1869) came said libellant and presented his stipulation in the penalty of five hundred dollars, with Alexander McD. Young as surety, conditioned that said libellant shall prosecute his appeal with effect, and pay all costs and expenses as shall be awarded against him.

And said bond is approved by the judge; and which said bond is as follows:

Appeal bond.

Know all men by these presents that we, John M. Young as principal, and Alexander McD. Young as surety, are held and firmly bound unto The Northwestern Union Packet Company, in the penal sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Northwestern Union Packet Company, or to its certain attorney, successors, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, each and every of them, firmly by these presents, sealed with our seals, and dated the twenty-eighth day of September, in the year of our
41 Lord, one thousand eight hundred and sixty-nine.

Whereas the above-bounden John M. Young has appealed to the circuit court of the United States for the district of Wisconsin from a decree of the district court of the United States for the said district, bearing date the thirteenth day of September, 1869, in a cause in which the said John M. Young was libellant, and The Northwestern Union Packet Company was claimant of the steamboat Key City, her boilers, &c., and the barge Jim Sheets, and respondent:

Now, therefore, the condition of the above obligation is such that, if the above-named appellant, John M. Young, shall prosecute his appeal with effect, and pay all costs and expenses as shall be awarded against him as such appellant therein, then this obligation to be void; otherwise to remain in full force and effect.

JOHN M. YOUNG. [SEAL.]
By EMMONS & VANDYKE,
Proctors.
A. McD. YOUNG. [SEAL.]

In presence of—
CHARLES A. HAMILTON.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

Alexander McD. Young, being duly sworn, says that he is a resident and freeholder of the city of Milwaukee, State of Wisconsin, and is worth the sum of one thousand dollars over and above all just debts and liabilities in property not exempt by law from execution.

A. McD. YOUNG.

42 Subscribed & sworn to before me this 28th day of September, 1869.

J. M. MILLER,
U. S. Com'r, Wis

UNITED STATES OF AMERICA,
District of Wisconsin., ss:

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 27th day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

[SEAL.] J. M. MILLER, *Clerk.*

(Indorsed:) Chan. C., page 15. John M. Young vs. Steamboat Key City & Barge Jim Sheets. Certified copy record. Filed October 29, 1869. Edward Kurtz, clerk.

43 And now, at this same term of said circuit court, to wit, October term, A. D. 1870, and on the twenty-sixth day thereof, to wit, on the first day of November, A. D. 1870, the following proceedings were had, to wit:

Hearing in circuit court.

JOHN M. YOUNG
vs.
THE STEAMBOAT KEY CITY, HER ENGINES, &c., & Barge Jim Sheets, The N. W. Union Packet Co., claimant. } Appeal in admiralty.

This day came the parties, by their counsel—Mr. Emmons appearing for the libellant, and Mr. John W. Cary for the respondent—and this cause came on to be heard before the Hon. Thomas Drummond, circuit judge, and was argued by said counsel; and, the hearing not being concluded, the same was adjourned until to-morrow morning.

And afterwards, to wit, on the twenty-seventh day of said term, to wit, on the second day of November, A. D. 1870, the following proceedings were had, to wit:

JOHN M. YOUNG
vs.
THE STEAMBOAT KEY CITY, HER ENGINE, &c., & Barge Jim Sheets, The Northwestern Union Packet Co., claimant. } Appeal in admiralty.

44 This day came the parties, by their counsel, and the hearing of this cause was resumed before the Honorable Thomas Drummond, circuit judge, presiding alone, and concluded; when the same was held under advisement.

And on the said hearing, the following testimony, taken in this court, was read in evidence on the part of the libellant:

LIBELLANT'S TESTIMONY.

Deposition of W'm Young.

Circuit court of the United States in and for the eastern district of Wisconsin. In admiralty.

JOHN M. YOUNG, LIBELLANT & APPELLANT,
vs.
THE STEAMBOAT "KEY CITY" & BARGE "Jim Sheets," The Northwestern Union Packet Company, claimants & respondents.

EASTERN DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, United States commissioner in and for said district. The deposition of William Young, on behalf of the libellant and appellant, at the commissioner's office, Milwaukee, September
45 19, 1870. Present, N. J. Emmons, esq'r., of counsel for the libellant & appellant; A. L. Cary, esq'r, of counsel for the claimants & respondents.

WILLIAM YOUNG, being duly sworn, doth depose and say as follows, to wit:

I have been examined before in this suit, & it was, as I am informed, while the case was in the district court. I represent the same interest & relationship to the libellant that I did when I was last examined. I think the loss happened, for which recovery is sought in this suit, in May, 1864..

Q. Did you, in or about the month of May, 1864, or shortly thereafter, prefer a claim for compensation for said loss; & if so, to whom? In your answer you may state all the circumstances attending it, according to your best recollection.

(Objected to by respondent's counsel.)

A. Shortly thereafter I inquired of the agent of the Prairie du Chien & Milwaukee R. R., at Prairie du Chien, if he could inform me who was the owner of the barge "Jim Sheets," with a view of instituting an action for the recovery of my property. In due course I received answer that the Northwestern Packet Company was the owner
46 of the barge, & she was valued at about $2,000. I ascertained afterwards that Mr. John Lawler was the president of the Northwestern Packet Company, & after waiting a time I presented my claim to him verbally, & he promised to look into it. Some months expired before I saw him again, and he stated that he had not looked into it, but would do so. Those interviews all took place at the Newhall House, in Milwaukee. Lawler finally said that he could do nothing until he had seen Capt. Davidson, and the next interview he said he could not settle without a suit. I also met Capt. Davidson on one occasion & intimated to him that I was sueing him, or about to sue him—that I was bringing an action against him. I think those were the words, and he laughingly replied that he knew nothing about it, that it was all in the hands of Mr. Lawler. I have had frequent conversations with Lawler in regard to the suit, & one or two with Capt. Davidson.

Q. I want to call your attention to dates. About what time did you first call upon Mr. Lawler in regard to this matter?

A. I think it was early in the fall of 1864.

Q. Did you call upon him as soon as you ascertained that he was the individual personally to confer with—I mean as soon as you had
47 an opportunity so to do?

A. I called upon him at the Newhall House the first time I knew he was in town. I might say, too, that Mr. Lawler always gave me the idea that the thing would be settled.

Q. Do you remember when Lawler first referred you to Capt. Davidson—about what time—& what he said to you at the time as a reason why he referred you to Capt. Davidson?

A. I do not remember the time, but it was after the 2d or 3d interview. The reason he gave me was that Capt. Davidson was interested & he could not settle without his consent; after which I met Capt. Davidson & asked him if he had seen Lawler & explained the case to Davidson, & Davidson said he had nothing to do with it, at which I expressed my surprise.

Q. In whose hands did you place this matter, on the part of John M. Young, for prosecution?

A. In the hands of Messrs. Emmons, Van Dyke & Hamilton.

Q. Do you remember about what time you instructed prosecution?

A. I think it was in the fall of 1864, or early in 1865, when I instructed prosecution.

Q. Did you not, on the other hand, rather confer with them about a prosecution, and advise them that a suit should be delayed until
48 the end of your negotiations with Lawler for a settlement?

A. While I instructed them (Emmons, Van Dyke & Hamilton) to commence an action, they advised me that they had other similar cases against them, & that under my negotiations with Mr. Lawler I had better wait. Messrs. Emmons, Van Dyke & Hamilton also advised me that they thought Lawler would instruct payment if the other cases should be decided against him, & I rather think that Mr. Lawler also said that there were other cases & to await the result of them. This was in the course of our conversations.

Q. Do you remember what those cases were, or would you remember them if names of parties were mentioned to you now?

A. I think I would do so, but only from hearsay.

Q. In order that there may be no misunderstanding as to dates, had you not, prior to the time you heard of these pending suits, had conversations with Lawler in regard to this loss of Jno. M. Young?

A. Frequently—I mean several times—3 or 4 times.

Q. As between you & Mr. Lawler, he acting on behalf of the company you supposed he represented, & yourself as representing John M. Young, between May, 1864, & May 1, 1866, was this claim of Mr.
49 Young's allowed to sleep or remain unobserved or unacted upon; or on the other hand, was it called to his attention & kept in view?

A. It was not allowed to sleep for one moment. I spoke to Mr. Lawler about it I think every time I met him, & he kept putting me off, & led me think it would be satisfactorily settled all along, until I actually commenced the suit. I think it was in 1866 when he referred me to Capt. Davidson.

Q. The suits to which you have referred as pending, who were prosecuting those suits—what attorneys?

A. Messrs. Emmons & Van Dyke.

(All the above & foregoing testimony objected to by respondent's counsel, this objection being taken in due time, but placed at the foot of the testimony in order to save time.)

Cross-examination:

Q. In your interviews with Mr. Lawler in reference to the claim in suit, what company did you suppose Mr. Lawler represented?

A. The company owning the barge "Jim Sheets."

Q. What was the name of the company?

A. That was all that I knew at the time. I did not know the
50 name of the company. I knew it since.

Q. Have you not in your direct exam'n testified that shortly after this loss occurred you inquired of the agent of the Prairie du Chien & Milwaukee R. R., at Prairie du Chien, if he could inform you who was the owner of the b'ge Jim Sheets, & that in due course he advised you that it was owned by the Northwestern Packet Company.

A. I have; which is correct.

Q. Then in your interviews with Mr. Lawler you treated with him as president of the Northwestern P'ket Co., did you not?

A. I did.

Q. Did you suppose that Mr. Lawler was interested in this loss in any other way than as pres't of the N. W. Packet Co.?

A. I did not, except as a stockholder in that company.

Q. Please state as near as you can the exact date that Mr. Lawler referred to Capt. Davidson in this matter?

A. I cannot give the exact time, but it was some length of time after the first intimation of loss.

Q. In what year was it that he made reference to Capt. Davidson in these negotiations?

51 A. It might be in 1865 & 1866; it was a long time after the loss.

Q. In y'r direct exam. you have stated that from time of loss, May, 1864, up to May, 1866, this claim was not allowed to sleep. Was it kept alive or awake in any other way than through the negotiations you have stated as having had with Lawler, & your interviews in relation thereto with your attorneys, Messrs. Emmons, Van Dyke & Hamilton?

A. It was not.

Re-direct exam'n:

Q. Do you know whether inquiries were set on foot from time to time during that period to learn the whereabouts of the steamer "Key City," & the b'ge "Jim Sheets?"

A. I do.

Q. And what was the result?

A. The result was, as near as I can recollect, (tho' I almost forget that,) was that they were both in existence, & owned by another company, & that they were still on the Mississippi, running on the same route.

Q. At what period were they on the same route, & at what period below, & out of the jurisdiction of the court?

A. I don't understand what you mean by out of the jurisdiction of the court.

52 Q. Out of the State of Wisconsin.

A. I can't say.

Q. Do you know the fact by hearsay, or otherwise, that the vessel was seized as soon as you or your counsel knew that she was within the jurisdiction of the court, after you had elected to commence suit?

A. I do.

Re-cross-exam'n:

Q. Do you know the fact of the seizure of the vessel, as above stated, from hearsay or otherwise?

A. I know the fact of the seizure of the vessel from being so informed by my attorneys, Messrs. Emmons, Van Dyke & Hamilton.

Q. Do you know the time that this vessel was seized from any other source than being so informed by your attorneys?

A. I am not positive, but think that I had some conversation with Lawler in regard to it; that runs in my mind that I had such conversation. I am almost positive, but I would not swear to it.

Q. Did Mr. Lawler, or any other person or persons, other than your attorneys, inform you that this boat was seized the first time she was found within the jurisdiction after you had elected to commence suit?

53 A. No one but my attorneys; they were watching for it for some time.

Q. At what time did you elect to commence this suit?

A. I decided to commence suit in 1864; I wouldn't swear to the month; but in July or August, I think. I so decided the moment I had my claim.

Q. Is this the election referred to in the last direct interrogatory propounded to you?

A. It is.

Re-direct exam'n:

Q. When you speak of an election to commence suit in 1864, was or was not that election dependent upon the result of your negotiations for settlement with Mr. Lawler.

A. Entirely; & so expressed to him at the time. I told him I would sue him unless he settled; & from friendly reasons I put it off, at Lawler's request.

Q. And so that when you spoke of an election in your direct exam'n, just now referred to by counsel in cross-exam'n, you meant the final election after friendly intercourse for settlement was or seemed to be at an end?

A. Most assuredly.

Re-cross exam'n:

Q. Now I want to know when this final election to commence suit was made?

A. After I found out that I could not get a settlement by friendly negotiation.

54 Q. Give us the date, as near as you can.

A. On a letter from Lawler to my att'ys, under date of Oct. 22, 1867, from Prairie du Chien, I finally decided to commence suit; immediately after that letter was received.

(NOTE. In connection with this last answer of the witness, the counsel for the libellant offers the original letter to which the witness refers in evidence, and as a part of this deposition. Said letter & envelope are marked by the commissioner "Exhibit No. 1."

The counsel for the respondents objects to the introduction of the said letter in evidence, as incompetent, irrelevant, & immaterial, & for that it does not yet appear that said letter was written by the said John Lawler.)

(NOTE. In the same connection the counsel for the libellants offers in evidence a letter-press copy of letter written by Emmons & Van Dyke, to John Lawler, & dated Oct. 17, 1867, of which the following is a copy,

& to which the letter, Exhibit No. 1, is a reply. A copy of which letter is made by the com's'n'r from the letter-book of Emmons & Van Dyke, and attached hereto, marked Exhibit No. 2.

The counsel for the respondents objects to the introduction of said letter as incompetent.)

(NOTE. The counsel for the libellant also offers in evidence a
55 letter-press copy of letter dated October 2, 1867, written by said Emmons & Van Dyke to said Lawler. A copy of said letter is made by the com's'n'r & hereto annexed, marked Exhibit No. 3. Same objection.)

The counsel for the respondent consents that com's'n'r may copy above letter from the letter-book, & that said copies shall have the same force & effect as if the letter-book itself were introduced in court.

W'M YOUNG.

Read over to the witness & subscribed by him before me this 19th day of September, A. D. 1870.

FR. BLOODGOOD,
U. S. Com's'n'r.

Envelope.

Exhibit No. 1.

Prairie du Chien, Oct. 22, '67. Wis.

[Stamp.]

Mess. EMMONS & VAN DYKE,

Milwaukee,

Wis.

Exhibit No. 1.

MILWAUKEE AND PRAIRIE DU CHIEN RAILWAY,
TRANSPORTATION OFFICE,
Prairie du Chien, Oct. 22, 1867.

Mess. EMMONS & VAN DYKE.

GENTLEMEN: The attorneys of our co., Messrs. Allis, Gilfillan
56 & Williams, St. Paul, request a more full statement of the facts concerning the barge "Jim Sheets." I will now transfer the correspondence to you, and you will please inform Mr. Young that our co. will be guided by the determination of our counsel as soon as made known to you.

Yours, truly,

J. LAWLER.

Exhibit No. 1.—Fr. Bloodgood, U. S. com'r E. D. Wis.

(Copy.)

Exhibit No. 2.—Fr. Bloodgood, U. S. Com., Wis.

MILWAUKEE, *Oct.* 17, 1867.

JOHN LAWLER, *Prairie de Chien.*

DEAR SIR: Mr. W'm Young called upon us yesterday to learn your conclusion in regard to the claim for loss by wheat on the "Jim Sheets," in tow of the Key City, and the "J. P. Farley," in tow of the Northern Light. We sent to you, as requested by you, statement of losses and copy of protest of the Key City, under date of 2 inst.

Please let us hear from you upon the subject on receipt. Mr. Davidson, of St. Paul, was here about a week since. He says the matters of the "Jim Sheets" and J. P. Farley, alluded to, are for you to manage.

57 Truly, yours,

EMMONS & VAN DYKE.

Exhibit No. 3.—Fr. Bloodgood, U. S. Com'.

(Copy.)

MILWAUKEE, *Oct.* 2, 1867.

JOHN LAWLER, Esq'r, *Prairie de Chien.*

DEAR SIR: Enclosed find a copy of a protest of capt. and crew of steamb't "Key City," which you asked for; also, a statement of facts of that loss, and of the loss of the barge J. P. Farley, as shown by the statement & protest.

The loss on the Jim Sheets, in tow of the Key City, on the 20th day of May, 1864, was 4,758 bushels wheat, at $1 27, amounting to $6,042 66; bal. of cargo, viz., 229 bushels, has been returned by the company. Damage to barge J. P. Farley cargo, (see statement,) 1,049 29.

Int. from, say June, 1864.

Truly, yours,

EMMONS & VAN DYKE.

58 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Francis Bloodgood, a commissioner duly appointed by the circuit court in and for the eastern district of Wisconsin, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is a reference to me to take testimony herein under stipulation.

I further certify that I was attended by the parties or their counsel at the time and place as stated in the caption of said deposition, and by the said witness; and that the said witness being of sound mind and

lawful age, was, before the commencement of the taking of his deposition, by me duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and that the deposition as given was reduced to writing by Joseph Colt, my clerk, a disinterested person, in my presence & under my direction, & in presence of said witness, and from his statements; and that said deposition, when completed, was carefully read over to said witness and subscribed by him in my presence and in the presence of such of the parties and counsel in the said cause as were in attendance.

And I further certify that in the caption and body of the said deposition is contained a complete record of all the proceedings before me at the time of the taking of the same; and that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the circuit court of the United States for the eastern district of Wisconsin, the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the caption of said deposition named, nor in any wise interested in the event of said cause.

In testimony whereof I have hereunto set my hand this 1st day of October, A. D. 1870, and of the independence of America the 95th.

FR. BLOODGOOD,
U. S. Commissioner Eastern District of Wisconsin.

59 *Deposition of C. James Spencer.*

Circuit court of the United States in & for the eastern district of Wisconsin. In admiralty.

JOHN M. YOUNG, LIBELLANT & APPELLANT,
vs.
THE STEAMBOAT "KEY CITY" & BARGE "JIM Sheets," The Northwestern Union Packet Company, claimants & respondents.

EASTERN DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, United States commissioner in & for said district. The deposition of James C. Spencer on behalf of the libellant & appellant, at the commissioner's office, Milwaukee, September 28, 1870. Present, N. J. Emmons, of counsel for the libellant & appellant; A. L. Cary, of counsel for the claimants & respondents.

JAMES C. SPENCER, being duly sworn, doth depose and say as follows, to wit:

Q. Did you know a corporation by the name of the Northwestern Packet Company, & were you an officer, director, or stockholder of that company?

A. I knew the company, & was a stockholder.

Q. Do you know the circumstance of the company selling out to or consolidating with the Northwestern Union Packet Company?

60 A. I knew something of it, but at the time of the consolidation I was a stockholder in too small an amount to bother anything about it.

Q. Do you know whether the transfer to the new company comprised all the property of the Northwestern Packet Company?

(Objected to.)

A. It was intended to, & I suppose it did, but I don't know.

Q. Of what did the property of the Northwestern Packet Company consist?

(Objected to.)

A. Steamboats, barges, wharf boats, & debts.

Q. Has the Northwestern Packet Company, since that time, kept up any organization?

(Objected to.)

A. Not that I know of. I knew very little of the Northwestern Packet Company.

Cross-examination:

Q. When did this transfer or consolidation that you have spoken of take place?

A. I think it was in the spring of 1866.

Q. Were you an officer of the Northwestern Packet Company at that time?

A. I was not, nor had I ever been.

Q. Were you present when this arrangement to transfer or consolidate was made?

A. I was not.

Q. What is the source of your knowledge as to such transfer of property or consolidation?

61 A. From other stockholders or officers.

Q. That's your only source of knowledge?

A. I might explain further. Since then I have become more cognizant of the terms of consolidation through the Northwestern Union P'k't Company, in which last-named company I am a director.

Q. Have you ever made a personal examination of the records of the Northwestern P'k't Company, the Northwestern Union P'k't Company, or the La Cross & Minnesota Steam P'k't Company, for the purpose of ascertaining thereupon the terms & conditions of such consolidation?

A. I never have.

J. C. SPENCER.

Read over to the witness & subscribed by him before me this 28th Sept., 1870.

FR. BLOODGOOD,
U. S. Com's'n'r.

62 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Francis Bloodgood, a commissioner duly appointed by the circuit court of the United States for the eastern district of Wisconsin, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason

for taking the foregoing deposition is a reference to me to take testimony herein under stipulation.

I further certify that I was attended by the parties or their counsel at the time and place as stated in the caption of said deposition, and by the said witness; and that the said witness, being of sound mind and lawful age, was, before the commencement of the taking of his deposition, by me duly and publicly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; and that the deposition as given was reduced to writing by Joseph Colt, my clerk, a disinterested person, in my presence and under my direction, and in presence of said witness, and from his statements; and that the said deposition when completed was carefully read over to said witness, and subscribed by him in my presence, and in the presence of such of the parties and counsel in the said cause as were in attendance.

And I further certify that in the caption and body of the said deposition is contained a complete record of all the proceedings before me at the time of the taking of the same; and that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the circuit court of the United States for the eastern district of Wisconsin, the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the caption of said deposition named, nor in any wise interested in the event of said cause.

In testimony whereof I have hereunto set my hand this first day of October, A. D. 1870, and of the independence of America the 95th.

FR. BLOODGOOD,
U. S. Commissioner Eastern District of Wisconsin.

63 *Stiplation for testimony to be taken before Joseph Colt.*

U. S. circuit court eastern district of Wisconsin. In admiralty.

JOHN M. YOUNG
vs.
THE STEAMBOAT "KEY CITY" & BARGE "Jim Sheets," The Northwestern Union Packet Company, claimant.

It is hereby stipulated that Joseph Colt may take the deposition of such witnesses on either side in the above cause in the States of Minnesota, Iowa, & Wisconsin, as shall be produced before him, both parties being in attendance. And that all depositions so taken before said Colt, both parties being in attendance, shall be read in evidence with the same force & effect, & shall be treated in all respects as if taken under a commission dedimus protestatum issued out of the court to said Colt as commissioner to take the same. And that no objection shall be taken to the manner or form of taking or returning such depositions.

Dated Milwaukee, July 18, 1870.

EMMONS & VAN DYKE,
Proctors for Libellants.
JOHN W. & A. L. CARY,
Proctors for Respondents.

Filed October 1st, 1870. E. Kurtz, Clerk.

64 CLAIMANT'S TESTIMONY.

Deposition of W'm Rhodes.

Circuit court of the United States in and for the eastern district of Wisconsin. In admiralty.

JOHN M. YOUNG, LIBELLANT & APPELLANT,
vs.
THE STEAMBOAT "KEY CITY" & BARGE "JIM Sheets," respondents; The Northwestern Packet Company, claimant and respondent.

DISTRICT OF MINNESOTA, *ss.*

Before Joseph Colt, commissioner &c. The deposition of William Rhodes on behalf of the respondents & claimant, at the Northwestern Union Packet Company's office, St. Paul, Minn'a, July 21, 1870. Present N. J. Emmons, esq'r of counsel for libellant; John W. Cary, esq'r of counsel for respondent & claimant.

WILLIAM RHODES, being duly sworn, doth depose and say as follows, to wit:

I am the secretary & treasurer of the Northwestern Union Packet Company. The N. W. Union Packet Co. is an incorporated company under the laws of Iowa, & was incorporated April 30th, 1866, to the best of my recollection.

65 Q. Did you know an incorporation by the name of the "Northwestern Packet Company?"

A. I did. It was an incorporation under the laws of the State of Iowa.

Q. Who was the owner of the steamer "Key City" & of the barge "Jim Sheets" prior & up to the 1st day of May, 1866, & in possession of said boat & barge?

A. Prior to May 1st, 1866, the Northwestern Packet Company owned them, and it purchased them from the "Galena, Dunleith & Dubuque Packet Company" about 1864. I think it was that year.

Q. Did the Nortwestern Packet Company sell said boat and barge; & if so, when & to whom?

A. They did, to the Northwestern Union Packet Company, May 1, 1866. I hold in my hands the original bills of sale made & executed by the "Northwestern Packet Company" to the "Northwestern Union Packet Company," & which were received for record Sept, 21, 1866, & recorded—deed of "Key City" on pages 142, '3 & '4 of book "A," custom-house, Dubuque, Sept. 24, 1866—deed of barge "Jim Sheets" filed for record 21st Sept., 1866, & recorded in book "A," of the custom-house, Dubuque, on pages 206, '7, & '8.

(These originals are exhibited to the counsel for the libellant;
66 he makes no objection to the formality of the instruments, but admits that they convey to the Northwestern Union Packet Company the boat & barge mentioned in the pleadings; waives the production of the original instruments of conveyance at the hearing. They contain no recital of the actual consideration other than the mention in one of the conveyance of the steamer $20,000, the barge $4,000, being the consideration expressed in the instruments.) The witness also produces a certified copy of the enrollment of the said steamer "Key City"

in the name of the Northwestern Union Packet Company, and the original enrollment of the barge "Jim Sheets," also in the name of the Northwestern Union Packet Company, which said certified copy & said original are hereto attached & made a part hereof, marked respectively exhibits "A" & "B."

Cross-examination:

Q. At the time of the transfer to which you have testified, were you an officer & in the employ of the Northwestern Union Packet Company, the claimants & respondents in this case?

A. At the time of the transfer these were the officers of the respective companies. After the transfer was completed, I was elected treasurer of the Northwestern Union Packet Company.

67 Q. Do you know the real & actual consideration of the transfer of the stm'r "Key City" & barge "Jim Sheets," from the Northwestern Packet Company to the Northwestern Union Packet Company? & if you do, state it in detail, & all you know about the transaction, producing documents & papers, such as you have in your possession.

A. The best manner in which I can answer the question is in producing the documents.

(Witness here produces a certified copy of the bill of sale of the property from the Northwestern Packet Co. to the Northwestern Union Packet Co., a copy of which bill of sale is hereto attached, marked "Exhibit C."

Witness also produces for inspection & for the purposes of having a copy made & attached hereto an instrument of which a true copy is hereunto annexed & marked Exhibit "D."

Witness also produces another instrument a copy of which is also hereunto annexed & marked "Exhibit E."

Witness also produces another document which purports to be an appraisement of the value of the property which the La Crosse & Minnesota Steam Packet Company transferred to the Northwestern Union Packet Company, as specified in "Exhibit E," & also of the

68 property transferred by the Northwestern Packet Company to the Northwestern Union Packet Company, as specified in Exhibit D," which said paper is hereto annexed & marked "Exhibit F.")

(Libellant's counsel objects to counsel's definition of the paper. It speaks for itself.)

Q. Have you any other documents in your possession or under your control, which have relation to the transfer of the vessel "Key City," or barge "Jim Sheets," from the "Northwestern Packet Company" to the "Northwestern Union Packet Company?"

A. None that I know of.

Q. Prior to your occupation as secretary & treasurer of the Northwestern Union Packet Company, what was your occupation theretofore or immediately theretofore?

A. I was secretary of the La Crosse and Minnesota Steam Packet Company.

Q. That was one of the companies which transferred property to the Northwestern Union Packet Company?

A. Yes.

Q. Was not the whole transaction to which you have referred a mere consolidation of the interests of those two several corporations into one?

A. I can't answer that question. The bills of sale & papers produced, will show what the object of it was.

69 Q. Mr. Rhodes, was not that the expressed object & intent of the parties who consummated that arrangement? I mean the individuals who negotiated the transaction.

(Objected to as incompetent & immaterial.)

A. I cannot answer the intent or object of the parties who negotiated it.

Q. Do you not know that the two companies, as theretofore organized, were competing & rival lines as between one another?

(Ojected to as above.)

A. They were competing lines, but running in connection with two different railroads.

Q. Do you not also know that the prime object of forming a coalition was to destroy that competition & to leave one party competent to do the transportation business of the river, as then competed for?

(Objected to as above.)

A. I can't say whether that was the prime object or not, but do know that a large expense was saved in agencies & other expenditures by running under one management.

Q. When this transfer was made, were not you or in other words the new organization, The Northwestern Union Packet Company, aware of the fact that the Northwestern Packet Company was largely
70 in debt; and was there not a guaranty fund provided to pay or liquidate the indebtedness of the Northwestern Packet Company?

A. I was not aware of the indebtedness of the Northwest'n Packet Co., at the time of the transfer, excepting from the statement of Mr. Blanchard. Geo. A. Blanchard, the then secretary of The Northwestern Packet Company, who stated, at the time of the meeting held for the purchase of the property of their company, that the indebtedness of said company would not exceed $125,000. This is all I knew of their indebtedness at that time. If there be a guaranty fund, it is expressed in the bill of sale from the Northwestern to the Northwestern Union, & that is all I know about it.

Q. Would W'm F. Davidson probably know more about this transaction than you yourself know?

A. I cannot possibly answer that question, because I don't know what he does know.

Q. Mr. Davidson was at the head of this arrangement for consolidation or purchase, to which you have referred, was he not, & the main capitalist engaged therein?

A. I cannot say that he was at the head of the arrangement
71 more than others; I think he is the main capitalist in the Western Union Packet Company as an individual.

Q. Was he not also the main capitalist engaged in one or both of the other companies referred to?

A. He was the main capitalist in the La Crosse & Minnesota Steam Packet Company, as an individual, but had no stock in the Northwestern Packet Co., at the time of the transfer, to my knowledge.

Re-direct exam'n:

Q. From 1864 to 1867, was the steamer "Key City," & barge "Jim Sheets," engaged in navigating the waters of the Upper Mississippi, from St. Paul to Dubuque?

A. The steamer "Key City," I know was; the barge "Jim Sheets," I think was; she sunk either in 1866 or 1867.

Q. Was the La Crosse & Minn'a Steam P'k't Co. an incorporated company; & if so, under the laws of what State was it incorporated?

A. It was an incorporated company, & incorporated under the laws of Wisconsin.

Q. Have you been the secretary of the Northwestern Union Packet Company since May, 1867, & have you in your possession as such
72 secretary all the books, records & papers pertaining to the organization & business of said company?

A. I have as secretary since that time & have all the papers, books & records pertaining to the organization and business of the company in my possession as such secretary.

Q. What is the present amount of the capital stock of the Northwestern Union Packet Company?

A. It is over one million & a half, but the precise amount, I can't tell, without reference to my books. The stock was right away increased to a million & a half, & has since been increased still further.

Q. In what way did the Northwestern Union Packet Company pay the La Crosse & Minnesota Steam Packet Company & the Northwestern Packet Co. for the property mentioned in the bills of sales. Exhibits "C" & E?

A. By issuing stock to the amount of ($1,000,000) one million dollars to the La Crosse & Minn'a Steam P'k't Company, & five hundred thousand dollars to the Northwestern Packet Company, or to the individuals of the Northwestern Packet Company, who held the stock of that company, upon their surrendering the stock of their company—the old company, the Northwestern.

Q. Was this amount of stock, one million to the La Crosse &
73 Minn'a Steam P'k't Co. and five hundred thousand to the Northwestern Packet Co., actually issued by the Northwestern Union Packet Co., & was it received by said La Crosse & Minn'a Steam P'k't Co. & said Northwestern P'k't Co. in full satisfaction of all the property so transferred by Exhibits "C" & "E" respectively?

A. The stock was so issued & received by the respective companies. That is to say, one million dollars of stock was issued to the La Crosse & Minn'a Steam P'k't Co., & the five hundred thousand dollars was issued to the stockholders of the Northwestern P'k't Co. upon their surrendering the stock of the Northwestern P'k't Co.

Q. Was this stock so issued to the stockholders of the Northwestern P'k't Co. issued to them individually by direction of the Northwestern P'k't Company?

(Objected to, without the production of the authority of that company, showing its consideration. Libellant's counsel wants to know upon what consideration they acted in voting the stock to individuals without the payment of the indebtedness of the Company.)

A. It was.

Q. Was this stock so issued to the stockholders of the Northwest'n P'k't Co. received in full satisfaction of the property transferred
74 by the Northwest'n Co. to the Northwest'n Union Co. under bill of sale marked "Exhibit C?"

(Objected to as incompetent, & further that it is incompetent without the production of written instruments of transfer, if there were any.)

A. It was.

Q. Is all of said stock of the Northwest'n Union P'k't Co. so issued now outstanding?

A. There is some of the old stock of the Northwestern Company that has not been surrendered—I think some 400 or 500 shares, except that it is all outstanding—and the stock of the Northwestern Union P'k't Co. issued for that 400 or 500 shares of stock is in my possession ready

to be exchanged for that stock when surrendered. I can give the exact amounts by reference to my books.

Q. What amount of debts of the Northwestern P'k't Co. has the N. W. Union P'k't Co. paid, & out of what fund have they been so paid?

A. I can't say, but think it is over $250,000; I can tell exactly by reference to my books.. They have been paid out of the net earnings of the Northwestern Union Packet Company. Our basis was in the ratio of two-thirds of the net earnings to the La Crosse & Minn'a St'm P'k't Co. & one-third of the net earnings to the Northwestern P'k't Co. The stock was issued upon the appraisement of the property. The
75 property of the La Crosse Company was appraised at double the value of the property of the Northwestern Company. In paying the debts of either company, such payment was charged on the books of the N. W. Union P'k't Co. against the respective companies, & at the end of the year the net earnings of the company were passed to the credit of the respective companies in the ratio of two-thirds to the La Crosse & Minn'a St'm P'k't Co. & one-third to the Northwestern Co.

Q. State how those accounts now stand.

(Objected to as immaterial.)

A. To the best of my knowledge the N. W. P'k't Co. is indebted to the N. W. Union P'k't Co. over $60,000. The La Crosse & Minn'a St'm P'k't Co. have a credit, I think, of $173,000. I can tell exactly by reference to my books. I will furnish a statement showing the exact state of these accounts, & of the stock accounts to be annexed hereto, & marked respectively, Exhibits "G" and "H."

Q. You may state the authority or right by which you passed to the credit of the N. W. P'k't Co. the net earnings which would belong to the stockholders that were of that company, but now hold the stock of the Northwestern Union P'k't Co.

(Objected to as immaterial. Objection waived.)

76 Adjourned until July 22, 1870, at 9 o'clock a. m.

JULY 22, 1870.—When the parties appeared as before, pursuant to adjournment, & the deposition of said witness was continued, as follows:

Answer to the last preceding interrogatory. It was done by the direction of the president & directors of the Northwestern Union Packet Company, and for the purpose of paying the debts of the Northwestern Packet Company, as provided in "Exhibit C;" and also in pursuance of the endorsement on the stock issued to said stockholders, which endorsement is in the words & figures following, to wit:

"This certificate of stock is issued in lieu of certificate of stock in the Northwestern Packet Company, surrendered, and is subject to the liabilities and obligations of the said Northwestern Packet Company. It is entitled to no dividend until the indebtedness of said Northwestern Packet Company shall have been paid out of one-third of the nett earnings of the Northwestern Union Packet Company."

Q. Was all the certificates of the stock issued to the former stockholders of the Northwestern Packet Company in payment of the property transferred by that company to the Northwestern Union
77 Packet Company, endorsed on their face with the endorsement above set forth?

A. They were.

Q. The certificates of stock issued by the N. W. Union P'k't Co. were all in the same form, only those issued to the stockholders of the Northwestern P'k't Co. had this endorsement on the face of them; is that so?

A. Yes; it was only the certificates of stock issued to the stockholders

of the Northwestern P'k't Co. that had this endorsement on. There was no endorsement on the certificates issued to the La Crosse & Minn'a St'm P'k't Co., as that company was out of debt.

Q. Does "Exhibit H," attached hereto, contain a correct list of the present stockholders of the Northwestern Union Packet Company, as they now appear upon the books of the company?

A. It does, with the exception of a few small transfers made since January 1, 1870.

Re-cross-exam'n.

Q. What is the nature of the disbursements mentioned in "Exhibit G?" I refer particularly to the account stated with the N. W. P'k't Co.

A. It includes all character of indebtedness of whatever nature, overcharges, rebates, and general indebtedness of the company of
78 whatever nature that was established ag'st said company, or certified by the officers of said company. I have, in some few instances, paid small amounts without previous authority from the officers of said company, but afterwards approved by them.

Q. If, in the present case, there had been a recovery against the claimants or respondents, or the vessel had been condemned to pay the amount sought to be recovered, it would, on payment, have been charged over against the Northwestern Packet Company as a disbursement on its account, would it not?

A. If paid it would have been charged as a disbursement on the account of the Northwestern P'k't Co.

WILLIAM RHODES.

Read over to the witness & subscribed to by him before me this 22d July, 1870.

JOS. COLT,
Special Com's'n'r.

Exhibit "A" attached to dep's't'n of William Rhodes, July 21, 1870.

JOS. COLT,
Special Com's'n'r.

79 *Enrollment.*

No. 5. Permanent. In conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793; and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864. W. H. Laughton having taken or subscribed the oath required by the said act, and having sworn that the vessel hereinafter named is owner by different persons in shares as stockholders by *by* the name and style of the Northwestern Union Packet Company, whereof W'm F. Davidson is president, and that all the persons so owning a share or shares are citizens of the United States, sole owner of the ship or vessel called the "Key City," whereof W. H. Laughton is at present master, and as he hath sworn is a citizen of the United States, and that the said ship or vessel was built at Cincinnati, Ohio, in the year 1857, as appears by her certificate of enrollment No. 40, issued and dated at the port of Dubuqe, Iowa, on the 10th day July, 1866, now surrendered on account of change of district.

Where surrendered.

80 And said enrollment having certified that the said ship or vessel has one deck and no mast; and that her length is two hundred and twenty-three & $\frac{7}{10}$ feet; her breadth is thirty-six and $\frac{2}{10}$ feet; her depth is five and $\frac{4}{10}$ feet, that she measures five hundred and thirty-one tons and five hundredths, viz:

Date of surrender.

Tonnage. $\frac{1}{100}$.

Capacity under tonnage deck.....
Capacity of on the tonnage deck.....
Total tonnage.....

And that she is a steamboat, has transom stern and plain head. And the said W. H. Laughton having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said acts, the said steamboat has been duly enrolled at the port of St. Paul, Minnesota.

Cause of surrender.

Given under my hand and seal of office at the port of St. Paul this tenth day of July, in the year one thousand eight hundred and sixty-seven.

JOSEPH LEMAZ,
Collector.
By GEO. W. MOORE,
D. Coll.

OFFICE OF DEP'T COLL. CUSTOMS,
St. Paul, Aug. 14, 1869.

I certify the within to be a true copy of the last enrollment of the steamer Key City under which she is now sailing, and which is on file in this office.

[SEAL.]

GEO. W. MOORE,
D. Coll. Customs.

81 (Indorsed:) Certified copy, No. 5. Enrollment of the steamer Key City, issued at the port of St. Paul, July 10, 1867. Burthen $531\frac{5}{100}$ tons. Where surrendered. . Date of surrender, day of 18 . Cause of surrender.

Exhibit "B," attached to the deposition of William Rhodes, July 21, 1870.

JOS. COLT,
Special Com's'n'r.

Form C.] *Enrollment.*

Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793; and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864. Geo. A. Blanchard, sec'y of the N. W. U. Packet Company, having taken or subscribed the oath required by the said act, and having sworn that the vessel hereinafter named is owned by the N. W. U. Packet Company of which I am sec'y, and that the said co. are citizens of the United States, sole owners of the ship or vessel called the Jim Sheets, whereof Geo. A. Blanchard is at present

No. 57. 1866.

Permanent.

Where surrendered.

82 master, and as he hath sworn is a citizen of the United States, and that the said ship or vessel was , and D. W. Hewitt & John G. Potts having certified that the said ship or vessel has one deck and no mast; and that her length is $131\frac{9}{10}$ feet; her breadth, $19\frac{6}{10}$ feet; her depth, $3\frac{8}{10}$ feet; her height, $\frac{}{10}$ feet; that she measures 68 tons and 14 hundreths, viz:

Date of surrender, day of.

Tonnage $\frac{1}{100}$.

Capacity under tonnage deck.....
Capacity between decks above tonnage deck.....
Capacity of enclosures on the upper deck.....
Total tonnage.....

Cause of surrender. And that she is a barge, has and head. And the said Geo. A. Blanchard having agreed to the description and admeasurement above specified, and sufficient security given according to the said acts, the said barge has been duly enrolled at the port of Dubuque, Iowa.

Given under my hand and seal at the port of Dubuque this 10th day of July, in the year one thousand eight hundred and sixty-6.

[SEAL.] JOHN B. HENION,
Surveyor of Customs.

83 (Indorsed:) 57. Enrollment of the barge Jim Sheets. Issued at the port of Dubuque, July 10th, 1866. Original.

Exhibit C.—Bill of sale and contract of Northwestern Pk't Co. to the Northwestern Union Pk't Co.

For the consideration hereinafter mentioned the Northwestern Packet Company, party of the first part, hereby grants, bargains, & sells, and by these presents has granted, bargained, & sold to the Northwestern Union Packet Company, party of the second part, a corporation organized this day under the laws of Iowa, all the steamboats, with their machinery, tackle, apparel, & furniture, barges and boats of every kind, and all apparatus of every name, nature, and kind, belonging to said first party, and heretofore used by it in or about its business as a transportation company, together with all stores on hand.

The Northwestern Union Packet Co., second party as aforesaid, in consideration of the sale and delivery aforesaid, agrees and binds
84 itself to pay and satisfy all the debts owing by the said first party, whether the same are now due or not, or whether the same are liquidated or not, and to pay the balance of the purchase-money for said property in certificates of full paid stock in said second party, the amount of stock so to be issued and delivered by said second party to said first party, to be nominally the sum of five hundred thousand dollars.

It is further mutually agreed that the indebtedness aforesaid shall be paid out of the first nett earnings of said second party, the amount of nett earnings paid from time to time to be in the same proportion to the whole amount of said nett earnings as the stock owned by said first party bears to the stock owned by the La Crosse & Minnesota Packet Company, in the said second party, the Northwestern Union Packet Company.

In witness whereof this instrument is signed by the presidents &

secretaries of the parties and their private seals attached, this 30th day of April, A. D. 1866.

(Signed) GEO. A. BLANCHARD, [SEAL.]
Sec'y Northwestern Packet Co.
GEO. A. BLANCHARD, [SEAL.]
Sec'y Northwestern Union Packet Co.
JNO. LAWLER,
Pres't N. W. P'k't Co.
W'M F. DAVIDSON,
Pres. Northwestern Union P'k't Co.

"Exhibit C," attached to deposition of William Rhodes, July 21, 1870.
JOS. COLT,
Special Com's'n'r.

85 "*Exhibit D.*"—*Articles of incorporation of the Northwestern Union P'k't Co., organized under and by virtue of the 52nd chapter of the revision of 1860 of the laws of Iowa entitled corporations for pecuniary profit.*

W. F. Davidson, John Lawler, George L. Dunlap, & John C. Gault hereby agree to, and do hereby associate themselves for the purpose of becoming incorporated under the above-entitled law of the State of Iowa.

It is agreed, 1st, that the name of the corporation shall be the Northwestern Union Packet Co., and that the general nature of the business shall be to purchase, charter, buy, build, own, and control vessels to be propelled in whole or in part by steam or otherwise, for the purpose of using them in the transportation of persons and property on the Mississippi River and its tributaries; to erect, purchase, lease, maintain, and own docks, wharves, warehouses, and any and all kinds of buildings, structures or fixtures necessary and useful for carrying on the business of navigation, freighting, forwarding, storing, or transporting property or persons, or for the purpose of building, re-building, or repairing vessels of any and every kind.

86 And it is agreed further, that this corporation shall have power to lease, transfer, assign, convey, and sell any and all kind of its vessels, steamboats, barges, wharfs, warehouses, docks, and all of its property of every description, and to do any and all acts and things which may be neeessary to an economical and successful prosecution of their said business; and amongst other powers not hereinbefore enumerated, it is agreed that it shall have power to borrow money in its corporate capacity and name, and in such capacity to make, execute and deliver to any person or persons, or body corporate or politic, any and all writings, notes, bonds, mortgages or real estate, or personal property, or other security of whatsoever name or kind; to enter into any arrangement, agreement or contract with any person or persons, association, copartnership, or corporation, in reference to the storing, forwarding or freighting of any kind of property by this corporation, or to any and all business incidental to, or arising from, the transportation of persons and property.

It is agreed, secondly, that the corporate stock of the corporation shall be one million of dollars, which may be increased from time to time, by a vote of at least two-thirds of the stock, to any sum not exceeding five millions of dollars, the stock to be divided into shares
87 of one hundred dollars each, which shall be deemed personal

property, and shall be transferable on the books of the corporation in such manner as the by-laws shall direct.

It is agreed, thirdly, that W. F. Davidson, John Lawler, George L. Dunlap, John C. Gault, W'm Rhodes shall constitute the first board of directors, and shall hold their offices until other directors are elected by the stockholders, and in case any of such persons should die or refuse or neglect to act as such directors, the others may declare his or their places vacant, and elect some other *or other* persons in his or their stead, and said directors, during their continuance in office, shall have and possess all the power, rights, and authority conferred by this agreement on the board of directors to be elected by the stockholders.

It is agreed, fourthly, that the term of this corporation shall commence on the 1st day of May, A. D. 1866, and continue the full term of seventy years unless sooner terminated by mutual consent; and it is further understood and agreed that this corporation may be dissolved at any time by a vote of three-fourths of the stock at a special meeting called for that purpose, upon thirty days' notice, by publication
88 in a newspaper published in the city of Dubuque, Iowa; and it is further agreed that these articles of association, except the one last recited, may be changed at any time by a vote of two-thirds of the stock at a general or special meeting called for that purpose.

It is agreed, fifthly, that the officers of this corporation shall be a president, general manager, secretary, treasurer, and not more than seven, nor less than five directors, including the president, all of whom shall be stockholders. The directors shall be elected by ballot by the stockholders, and at their first meeting shall elect one of their number president, and elect a general manager, secretary, and treasurer, and a majority of the directors shall be competent to manage the affairs of the corporation.

It is further understood and agreed that the officers of the corporation shall be elected annually at such time and place as the board of directors may designate from time to time, and each stockholder shall be entitled to one vote for each share of stock owned by him; at least ten days' notice to be given of such election by the secretary, by publication in at least one newspaper in Chicago, Ills., and one in Dubuque, Iowa.

89 It is agreed, sixthly, that the business of the corporation shall be transacted by the directors, and they may adopt, alter, and amend, by-laws and rules and regulations for their government.

It is agreed, seventhly, that every member of the corporation shall be bound to pay the amount subscribed as stock at such times and in such sums as may required by the directors, and a failure to pay any sum or installment as required, within thirty days, after demand and notice, shall operate as a forfeiture to the corporation of all previous payments, and the party in default, shall be liable to pay any balance that may be due on his, her, or their subscription; and it is further understood and agreed that the property, rights, credits, and effects of the corporation shall be held in trust by the directors for the use of the creditors, and that in no event whatever shall the individual property of the stockholders be liable for the debts of the corporation, and that the highest amount of indebtedness or liability to which the corporation may at any time be subject, shall not exceed one-fourth of the capital stock.

It is agreed, ninthly, that the board of directors may fill any vacancy in their body occasioned by death, resignation, or otherwise, and
90 the person or persons, so appointed, shall serve until the next general election for directors.

In witness whereof we have hereunto set our hands this 30th day of April, A. D. 1866.

W'M F. DAVIDSON.
J. LAWLER.
GEO. L. DUNLAP.
JNO. C. GAULT.

"Exhibit D," attached to deposition of William Rhodes, July 21, 1870.

JOS. COLT,
Special Comm'r.

"EXHIBIT E."

For the consideration hereinafter mentioned, the La Crosse & Minnesota Steam Packet Company, party of the first part, hereby grants, bargains, and sells, and by these presents has granted, bargained, and sold to the Northwestern Union Packet Company, a corporation organized this day, under the laws of Iowa, all the steamboats with their machinery, tackle, apparel, and furniture, barges and boats of every kind belonging to said party of first part, and heretofore used by it in or about its business as a transportation company, together with all stores on hand.

The Northwestern Union Packet Company, party of the second part, in consideration of the sale and delivery aforesaid, agrees and
91 binds itself to pay and satisfy all the debts owing by the said first party, whether the same are now due or not, or whether the same are liquidated or not, and to pay the balance of the purchase-money for said property in certificates of full paid stock in said second party, the amount of stock so to be issued to be determined as hereinafter provided.

It is further agreed that whereas it has this day been agreed between the Northwestern Packet Company and the La Crosse & Minnesota Steam Packet Company, that the property this day sold by said companies to said Union Packet Company, party of the second part, shall be appraised and valued by James Ward, John Kyle, and Thomas B. Rhodes; and whereas it has this day been agreed between said Northwestern Packet Company and said Northwestern Union Packet Company that five hundred thousand dollars in stock of said Northwestern Union Paket Company shall be issued to the said Northwestern Packet Company without regard to the amount of said valuation, it is hereby agreed that said Northwestern Union Packet Company shall issue certificates of full paid stock in said company to said La Crosse &
92 Minnesota Steam Packet Company to the amount of the appraised value of its property in the same proportion as five hundred thousand dollars bears to the appraised value of the property of said Northwestern Packet Company, so sold as aforesaid.

It is further mutually agreed that the indebtedness aforesaid shall be paid out of the first nett earnings of said second party, the amount of nett earnings paid from time to time to be in the same proportion to the whole amount of said nett earnings as the stock owned by the said first party bears to the stock owned by the Northwestern Packet Company in the said second party, the Northwestern Union Packet Company.

In witness whereof this instrument is signed by the presidents and

secretaries of the parties and their private seals attached, this 30th day of April, A. D. 1866.

W'M RHODES, [SEAL.]
Sec'y La Crosse & Minnesota Steam Packet Co.
GEO. A. BLANCHARD, [SEAL.]
Sec'y Northwestern Union Packet Co.
W'M F. DAVIDSON,
Pres't La C. & Min. Steam P'k't Co.
W'M F. DAVIDSON,
Pres't Northwestern Union P'k't Co.

"Exhibit E," attached to the deposition of William Rhodes. July 21, 1870.

JOS. COLT,
Special Com's'n'r.

93

La Crosse Packet Co. stock as appraised	292,650 00	
Steamer Phil Sheridan	88,375 00	
" City of Saint Paul	75,000 00	
Lands of the La Crosse P'k't Co.:		
Buffalo Co., 480 acres, at $10 per acre	4,800 00	
La Crosse Co., 1,750 " " $8 " "	14,000 00	
Winona " 240 " " $8 " "	1,920 00	
La Crosse boat store stock, May 1st	22,749 40	
Logs, lumber, & wood, estimated	32,000 00	
Barges Mattie Cramer	5,000 00	
Two iron fire-proof safes	600 00	
Due from La Crosse P'k't Co	20,553 60	
		557,648 00
Northwestern Packet Co. stock	197,950 00	
New barges & Wauzeka ac	67,931 64	
Boat store stock, Dubuque, May 1st	11,643 00	
One iron fire-proof safe, co.'s office, Dubuque	1,300 00	
		278,824 64
		836,472 64

"Exhibit F," attached to deposition of William Rhodes. July 21, 1870.

JOS. COLT,
Special Com's'n'r.

94

Northwestern Packet Co. to N. W. Union P'k't Co.

To net disbursements from May 1, '66, to Jan'y 1, '67	137,314 44	
" " " " Jan. 1, '67, " Jan. 1, '68	93,647 22	
" " " " Jan. 1, '68, " Jan. 1, '69	16,535 25	
" " " " Jan. 1, '69, " Jan. 1, '70	359 26	
By ½ of net profits to Jan. 1, 1868		183,165 81
Balance		64,690 36
	247,856 17	247,856 17
To balance due N. W. Union P. Co. Jan. 1, '70	64,690 36	

La Crosse Packet Co. to N. W. Union P'k't Co.

To net disbursements, May 1, '66, to Jan. 1, '67	169,813 37	
" " " Jan. 1, '67, " Jan. 1, '68	23,009 18	
" " " Jan. 1, '68, " Jan. 1, '69	.....	
" " " Jan. 1, '69, " Jan. 1, '70	5,748 82	
By ½ of net profits to Jan. 1, 1868		366,331 62

" net receipts, Jan. 1, '68, to Jan. 1, '69		4,220 02
Balance	171,980 27	
	370,551 64	370,551 64
By balance due La X P. Co. Jan. 1, '70		171,980 27

"Exhibit G," attached to the dep's't'n of W'm Rhodes. July 22, 1870.

JOS. COLT,
Spec'l Com's'n'r.

95 *Stockholders in Northwestern Union P'k't Co., January 1st, 1870.*

Capital stock:	15,830	shares.
La Crosse & Minn'a Steam P'k't Co		10,000
Perry H. Smith, Chicago		363
Geo. L. Dunlap, "		187
Jno. C. Gault, "		1,250
Cha's S. Tappen, "		20
John Lawler, Pr. du Chien		332
Wellington Weigley, Dubuque		31
H. L. Dousman, Pr. du Chien		250
Ja's Reynolds "		220
McNairy, Claflen & Co., Cleveland		80
M. W. Beltzhoover, Pittsburgh		100
Mary E. Reynolds, Pr. du Chien		30
Ray & Dickenson, "		40
J. C. Fargo, Chicago		62
L. B. Boomer, "		45
Geo. B. Carpenter, "		50
J. Spencer Turner, "		50
Gilbert Hubbard, "		50
Blanchard & Wellington, Dubuque		377
E. Sawyer, St. Paul		20
W. F. Davidson, "		22
W'm Rhodes, "		1
P. S. Davidson, La Crosse		1
Ill. Central R. R., Chicago		150
J. R. Jones, "		125
96 W'm K. Rogers, Hastings		65
J. K. Graves, Dubuque		31
Susan D. Dickenson, Pr. du Chien		50
J. C. Spencer, Milwaukee		208
Thomas Payne, St. Louis		12
Henry Allen, "		10
Philip Delameter, New York		500
C. M. Pomeroy, St. Louis		10
P. P. Marrion, "		25
Sam. Cowell, "		10
J. H. Bettis, "		10
Joseph Gartside, "		10
J. B. Henderson and A. McPike, St. Louis		663
Cha's A. Keiser, "		50
Capt. Ford "		35
		15,545

In addition to the list of stockholders, as above and annexed, the following stock in the Northwestern P'k't Co. has never been surrendered:		
W. R. Arthur, Chicago		250
Robert Forsyth, "		35
	15,830	15,830

"Exhibit H," attached to the dep's't'n of W'm Rhodes, July 22, 1870.

JOS. COLT,
Spec'l Com's'ner.

97 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Joseph Colt, a commissioner under & by virtue of stipulation, dated July 18, 1870, filed herewith, do hereby certify that the reason for taking the foregoing deposition is the stipulation above referred to filed herewith.

I further certify that I was attended by the parties, or their counsel, at the time and place as stated in the caption of said deposition, and by the said witness; and that the said witness, being of sound mind and lawful age, was, before the commencement of the taking of his deposition, by me duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and that the deposition, as given, was reduced to writing by myself, in presence of said witness, and from his statements; and that the said deposition, when completed, was carefully read over to said witness by me, and subscribed by him in my presence, and in the presence of such of the parties and counsel in the said cause as were in attendance.

And I further certify that in the caption and body of the said deposition is contained a complete record of all the proceedings before
98 me at the time of the taking of the same, and that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the circuit court of the United States for the eastern district of Wisconsin, the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the caption of said deposition named, nor in anywise interested in the event of said cause.

In testimony whereof I have hereunto set my hand this 1st day of October, A. D. 1870, and of the independence of America the 95th.

JOS. COLT,
Commissioner, &c.

And afterwards, to wit, on the thirty-first day of said term, to wit, on the seventh day of November, A. D. 1870, the following proceedings were had, to wit:

Decree of circuit court.

JOHN M. YOUNG
vs.
THE STEAMBOAT KEY CITY, HER ENGINES, &C., & Barge Jim Sheets, The Northwestern Union Packet Company, claimant. } Appeal in admiralty.

This day came the parties, by their counsel; and, on considera-

99 tion of this cause, and the arguments of counsel, it is ordered, adjudged, and decreed by the Honorable Thomas Drummond, circuit judge, that the decree of the circuit court dismissing this libel be, and hereby is, affirmed.

And it is further, ordered, adjudged, and decreed, by the said circuit judge, that the libellant, John M, Young, pay the cost in this cause, to be taxed together with the costs of the district court, taxed at eighty-three dollars and eighty cents, within ten days, or in default thereof that an execution be issued against him and his stipulator, Alex. McD. Young, for the same.

And afterwards to wit, on the thirty-third day of said term, to wit, on the fourteenth day of November, A. D. 1870, the following proceedings were had, to wit:

Appeal.

JOHN M. YOUNG
vs.
THE STEAMBOAT KEY CITY, HER ENGINES, &c., & Barge Jim. Sheets, The Northwestern Union Packet Company, claimant. } Appeal in admiralty.

This day came the libellant, by his proctor, and prayed an appeal
100 to the Supreme Court of the United States from the decree of this court. Whereupon it is ordered by the court that the said appeal be, and hereby is, allowed, and that the libellant give bond with sureties to be approved in the penalty of five hundred dollars conditioned to pay the costs of said appeal.

NOVEMBER 16, 1870.

This day came William Young and Alexander McD. Young and filed their bond in the penalty of five hundred dollars conditioned that the libellant shall prosecute his appeal to effect and answer all damages and costs if he shall fail to make his plea good, which bond is approved by the district judge and is as follows:

Bond on appeal.

Know all men by these presents that we, William Young and Alexander McD. Young, both of the city of Milwaukee, and State of Wisconsin, are held and firmly bound unto The Northwestern Union Packet Company, in the full and just sum of five hundred dollars to be paid to the said The Northwestern Union Packet Company, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, and administrators, jointly and severally, by these presents,
101 sealed with our seals, and dated this sixteenth day of November, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately at a term of the circuit court of the United States for the eastern district of Wisconsin, in a suit depending in said court, between John M. Young, libellant, and The Steamboat Key City, her engines, &c., & Barge Jim Sheets, The Northwestern Union Packet Company, claimant, a decree was rendered against the said John M. Young, and the said John M. Young having taken an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit,

and a citation directed to the said The Northwestern Union Packet Company citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said John M. Young shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue. The words "having obtained and filed a copy thereof in the clerk's office of the said court" stricken out before signing.

W'M YOUNG. [L. S.]
A. McD. YOUNG. [L. S.]

Sealed and delivered in presence of—

Approved by—

A. G. MILLER,
District Judge.

102 Whereupon a citation issued.

103 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete copy of the record & proceedings in the suit of John M. Young vs. The Steamboat Key City & Barge Jim Sheets

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said eastern district of Wisconsin, this twentieth day of December, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninty-fifth.

[SEAL.] EDWARD KURTZ,
Clerk.

104 [SEAL.] United States of America to the Northwestern Union Packet Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein John M. Young is appellant, and you, as claimant of the steamboat Key City, her engine, &c., & barge Jim Sheets, are appellee, to show cause, if any there be, why the decree passed against the said John M. Young should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this sixteenth day of November, in the year of our Lord one thousand eight hundred & seventy, and of the independence of the United States the 95th.

A. G. MILLER,
District Judge.

We accept service of above citation this 23rd day of November, 1870.

JOHN W. & A. L. CARY.
Proctors for Claimant.

(Indorsement on cover :) No. 460. John M. Young, appellant, vs. The Steamboat "Key City" and Barge "Jim Sheets," The Northwestern Union Packet Company. E. Wisconsin C. C. U. S. Filed 4th January 1871.

SUPREME COURT
OF THE
UNITED STATES.

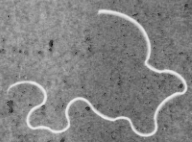
JOHN M. YOUNG, *Appellant*,

VERSUS

THE STEAMBOAT KEY CITY AND BARGE JIM SHEETS, THE NORTH-WESTERN UNION PACKET COMPANY, *Claimant*.

APPELLANT'S BRIEF.

N. J. EMMONS,
Counsel for Appellant.



SUPREME COURT

—OF—

The United States.

JOHN M. YOUNG, *Appellant*,
VERSUS
THE STEAMBOAT KEY CITY AND BARGE JIM SHEETS, THE NORTHWESTERN UNION PACKET COMPANY, *Claimant*.

THE LIBEL

Is for the breach of a contract of affreightment. Libellants allege, that on the 19th day of May, 1864, they shipped on board the barge *Jim Sheets*, appurtenant to and in tow of the steamboat Favorite, 4,987 bushels of wheat, to be safely carried from the port of Wabasha, in the state of Minne-

sota, to the port of Prairie du Chien, in the state of Wisconsin, and there delivered in good order, consigned to William Young, Milwaukee, "the unavoidable dangers of the river and fire only excepted;" the usual bill of lading having been executed and delivered. That the cargo of wheat was owned by libellant, and was of the value of $6,333.49. That the same, by reason of the unseaworthiness of the barge, and the carelessness and negligence of the master and crew, was wholly lost.

THE ANSWER

Admits the shipment and contract for carriage, and the loss; denies that the loss occurred in consequence of negligence of the master and crew, but alleges that, whilst the steamer, with her barge in tow, was proceeding on her voyage down the Mississippi River, "said barge, from some unseen and unknown cause, sprung a leak, which caused her to sink in the space of half an hour and that she carried down with her the cargo of wheat with which she was laden as aforesaid, which is the same wheat mentioned and set forth in the libel." That the sinking of the barge was "not in consequence of any manifest or known defect in said barge, or the rigging or tackle required for the running and management of said steamboat and barge."

The answer, by way of further defensive allegation, avers that at the time of the shipment and loss, the steamer and barge were owned by the "Northwestern Packet Company;" and upon information and belief, that from the time of the sinking of the barge up to the first day of May, 1866, the steamer and barge were used in navigating the waters of the Mississippi, and were frequently within the jurisdiction of the Court. That on said 1st day of May the respondent, for a valuable consideration, purchased the steamer and barge, without knowledge or notice of the lien or claim of libellant. That after the purchase by respondent, and until the commencement of this suit, the steamer and barge

were navigating the waters of the river, and were frequently within the jurisdiction of the court;" and insists that libellant "has lost his lien, and allowed the same to become stale, by his delay in seeking to enforce the same."

The answer does not allege that libellant had any knowledge or notice of the steamer or barge remaining or coming within the jurisdiction.

The libel was exhibited on the 22d day of November, 1867; three years and six months after the alleged loss.

The cause was heard in the District Court upon no other proofs (save as to ownership and value of the cargo) than the bills of sale from the "Northwestern Packet Company" to the respondent, "The Northwestern Union Packet Company," of the steamer and barge. The only issue of law or fact there, or in the Circuit Court, was upon the question of staleness of the claim, the original liability of the vessel for the loss being conceded.

THE TESTIMONY

Was chiefly taken and submitted in the Circuit Court; and which, with what appears upon the pleadings, discloses the following

STATE OF FACTS.

The libellant was the owner and shipper of the cargo of wheat; that the loss happened from no cause within the exceptive clause contained in the bill of lading, but from incompetent management, or insufficiency and unseaworthiness of the barge.

At the time of the shipment and loss, the steamer and barge proceeded against were owned by the "Northwestern Packet Company," a corporation created under the laws of the state of Iowa. Such ownership continued until the 30th day of April, 1866. This company was engaged in

the navigation of the Mississippi, and carrying on a general transportation business. Mr. John Lawler was President of the Company, and with whom negotiations and correspondence were had in regard to libellant's claim, from a period shortly after the accident, and before conveyance of the steamer and barge, and continuing to October, 1867, immediately preceding commencement of suit. (See Young's testimony, Record, 21–25.)

During the period of time referred to (prior to April, 1866,) another company was in existence, known as the "La Crosse and Minnesota Steam Packet Company," which was also engaged in the general transportation and carrying trade on the Mississippi. These two companies were rivals, and competed for the business of the river.

On the 30th of April, 1866, the two companies amalgamated their property and stock; a new company was organized under the laws of Iowa, and christened the "Northwestern Union Packet Company"; the corporators in which were selected, a part from each of the other two companies. To effect this new organization, the old companies conveyed, each, "all its steamboats, with their machinery, etc., barges and boats of every kind, and all apparatus of every name, nature and kind, belonging to it, and therefore used by it in and about its business as a transportation company, together with all stores on hand." The consideration of this conveyance was stock issued by the new company, and in and by the contract of sale, the "Northwestern Union Packet Company" (the present respondent), expressly bound itself to pay all the debts of the "Northwestern Packet Company," whether the debts were then due or not, or whether the same were liquidated or unliquidated, and to pay the balance of purchase money in certificates of full paid stock."

Stock of the new company, to the amount of the aggregate value of the property transferred, was issued to the stockholders of the old company; each certificate bearing an endorsement as follows:

"*This Certificate of stock is issued in lieu of certifi-*

cate of stock in the Northwestern Packet Company. It is entitled to no dividend, until the indebtedness of said Northwestern Packet Company shall have been paid out of one-third of the net earnings of the Northwestern Union Packet Company."

The foregoing facts in relation to the transfer of the property of the Northwestern Packet Company, including the steamer and barge here in question, appear in the deposition of William Rhodes. [Rec., 30–35.)

It further appears that the value of the property transferred was $278,824.64; that one-third of the net earnings or profits of the Northwestern Union Packet Company, between May 1st, 1866, and January 1st, 1868, amounted to the sum of $183,165.81; and that the disbursements during the same period, on account of the Northwestern Packet Company for its prior outstanding indebtedness, amounted to the sum of $247,856.17; leaving a surplus in favor of the old Northwestern Company of $214,133.

As before stated, the principal testimony going to the merits of the action was taken in the Circuit Court. In the District Court the case was heard upon the pleadings, and the deposition of William Young on the part of the libellant (Rec., p. 13), and the conveyances of the steamer and barge, as evidenced by the bills of sale (Rec., pp. 14–18), on the part of the respondent. The Court held the claim a stale one. In the Circuit Court additional proofs were taken. Deposition of William Young (Rec., pp. 21–26), showing the continued negotiations for settlement of the demand, with Lawler President of the old company, and with Davidson, President of the Company respondent, to within a period immediately preceding the filing of the libel; and that of Rhodes (30–35) developing the real consideration of the transfer.

The appellant assigns for *error:*

I.

That the Court erred in holding the claim of libellant a stale one, when there was no allegation or proof that the

libellant had knowledge that the vessel had been within the jurisdiction of the Court during the period elapsing since the accruing of the demand and the commencement of suit:

Brig Sarah Ann, 2 Sumner, 212.

2 Parson's Mar. Law, 664, Note (3.)

II.

That the Court erred in dismissing the libel, when liability of the original owners, and of the vessel and barge *in rem.*, was confessed; no equitable circumstances appearing to show why the lien should be deemed to have been waived or barred for staleness.

The Scow Bolivia, 1 Olcott's Rep., 474.

Scow Bolivia, 1 Olcott, 480.

[redacted]

[redacted]

The Mary, 1 Paine, 180.

The Batavia, 2 Dods., 500.

The Utility, 1 Blatch & How., 218.

Willard vs. Dorr, 3 Mason, 161–164.

The Easteru Star, Ware's Rep., 185.

Ship Medora, 2 Wood & M., 92.

The Sloop Louisa, 2 Wood & M., 48.

Barque Chusan, 2 Story, 455–469.

Willard vs. Dorr, 3 Mason, 91.

[redacted]

Jay vs. Allen, 2 Wood & M., 304–322.

Mason vs. Crosby, Davies, 313

The Sea Lark, 1 Sprague's Dec., 571.

The Gen. Jackson, 17 Law Rep., 324.

The Admiral, 8 Law Rep., 91.

The authorities cited are, perhaps, unnecessarily multiplied. They all prove and illustrate the proposition involved in this assignment of error.

I.

The mere conveyance of a vessel, even to an innocent purchaser, without notice, will not of itself necessarily disturb a maratime lien.

Shepard et al., vs. Taylor et al., 5 Pet., 675.

II.

In order to defeat the lien, some other circumstance than mere lapse of time should be made to appear, before the equity, upon which the doctrine is based, can arise.

The cases cited, all show this.

In the case of the *Batavia*, 2 Dods., Lord Stowell concluded upon the facts proven that the transfer was merely colorable to avoid payment of certain port charges and duties at Batavia, hence no equity in the purchaser to demand a discharge of the lien.

In *Willard vs. Dorr*, 3 Mason, Mr. Justice Story, passing on the question, says in substance: Courts of Admiralty, like Courts of Equity, will refuse their aid to enforce old, dormant demands. It prescribes a rule to itself, to analagy to statutes of limitation. They are rules of repose; otherwise demands would spring up after the evidence to repel them was gone by the death or dispersion of witness, or by the loss of important documents. Twelve years had elapsed, but no equitable circumstance appearing, to bring the case within the rule suggested, the remedy was enforced.

In the case of *The Admiral*, which was much relied upon below, stress is laid upon the circumstance that the alleged cause of action was a collision; the facts denied, and the witnesses dispersed. The purchasers were without notice, and without ability to contest the claim upon the facts.

In *Barque Chusan*, Justice Story says: "What will constitute a reasonable time, must depend upon the circumstances of each particular case, and is not a point susceptible of any definite or universal formulary."

In a case (*Chapin et al. vs. Steamboat Favorite*, Cir. C., Dist. of Wisconsin, 186—), Mr. Justice Davis said: "There is no artificial rule in the Admiralty by which the Court can determine at what period a claim becomes stale. Each case must be governed by its own circumstances." The case was one against this same respondent, and was one of the vessels transferred at the same time as the Key City.

In the present case the respondent received its conveyance with notice of existing indebtedness, and covenanted to pay it. The validity of our demand is conceded, and the respondent received and still holds a full consideration for his covenant to pay our debt.

That we could, in equity, compel the performance of such covenant will not be doubted. What consideration arises here, what condition to demand that our maritime lien be discharged more than would have arisen had the vessel remained in the hands and ownership of the "Northwestern Packet Company?"

The rule exists and is enforced for the protection of innocent purchasers without notice, and as against whom it would be inequitable to decree payment of another's debt.

There could be no reasonable pretence of staleness had the vessel remained the property of the old Company.

Mr. Rhodes tells us, in his testimony, that if there be a recovery here, it will be charged in account to the "Northwestern Packet Company;" and the facts prove the respondent to have an abundant indemnity fund. All the authorities show that such facts and circumstances are properly to be considered in determining the question of staleness of demands.

N. J. EMMONS,
Counsel for Appellant.

Supreme Court of the United States.

DECEMBER TERM, 1871—No. 244.

JOHN M. YOUNG, Libellant and Appellant.

vs.

THE STEAMBOAT KEY CITY AND THE BARGE JIM SHEETS—THE NORTHWESTERN UNION PACKET COMPANY, Claimant.

BRIEF FOR CLAIMANT.

JOHN W. CARY,
Of Counsel for Claimant.

Supreme Court of the United States.

DECEMBER TERM, 1871—No. 244.

JOHN M. YOUNG, APPELLANT,

vs.

THE STEAMBOAT KEY CITY AND BARGE JIM SHEETS —THE NORTHWESTERN UNION PACKET COMPANY, CLAIMANT.

This is an appeal in admiralty from the Circuit Court of the United States for the Eastern District of Wisconsin.

The libel was filed to recover for a barge load of wheat lost on the Mississippi on the 20th day of May, 1864.

The appellant filed his libel in the District Court November 22d, 1867. (Record, page 1.) It set forth that said steamboat was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation on the Mississippi River, and had appurtenant as a part of her carrying capacity the barge Jim Sheets. That on the 19th day of May, 1864, she left the port of Wabasha, Minnesota, designed upon a voyage on the Mississippi River, from said Wabasha to Prairie du Chien, Wisconsin, with a cargo of wheat on said barge, to be carried to said Prairie du Chien, to be there delivered to John Logan, to be reshipped to Wm. Young, of Milwaukee, the unavoidable dangers of the River and fire only excepted; but by reason of the unseaworthiness of said steamboat and barge, and the unskillfulness, mismanagement and carelessness of the master, and the carelessness, negligence and improper conduct of

of the said master, &c., said barge, on the 20th day of May, 1864, was sunk in the Mississippi River, and a part of the said wheat became wetted and damaged, and wholly lost to the libellant, and the balance the master failed to deliver, and the same was appropriated by the owners of said steamboat and barge to their own use, to libellant's damage of $6,333.49.

Record, pp. 2 and 3.

The monition was served by attaching the "Key City," April 7th, 1868.

Record, p. 6.

The claimant, the Northwestern Union Packet Company, filed an answer, setting forth:

That the said claimant is the owner of the steamboat Key City and barge Jim Sheets. Admits on information and bslief, the shipment and loss, but denies on like information and belief, all allegations of carelessness, unskillfulness and unseaworthiness, and as to whether the owners of said steamboat and barge appropriated any portion of said cargo to their own use, has no knowledge or information ; and further states that on the said 19th day of May, A. D. 1864, said steamboat and barge were owned by the Northwestern Packet Company, and on information and belief, states that she was seaworthy, staunch and sound, well equipped and sufficiently manned, but that on her voyage down the river, from some unknown cause, she sprung a leak and sunk in the river, wetting a portion of her cargo.

Record, pp. 11 and 12.

The answer further alleges that at the time of the sinking of said barge and her cargo of wheat, and at the time said steamboat took the same in tow, and gave said bill of lading, said steamboat and barge were, and from that time up to the first day of May, 1866, continued to be owned and navigated in the waters of the Mississippi River by the Northwestern Packet Company on the Upper Mississippi, and were frequently in the District of Wisconsin. That on the first day of May, 1866, the claimant purchased said steamboat and barge from the said NorthWestern Packet Company, for a valuable consideration, and ever since has been and now is the owner thereof. That claimant had noknowledge or notice of libellant's lien or claim, and the answer then submits and insists that libellant has lost

his said pretended lien, and allowed the same to become stale by his delay in seeking to enforce the same against said steamboat and barge.

Record, p. 12.

On the hearing in the District Court, the libellant proved the value of the wheat and rested.

Record, pp. 13 and 14.

The claimant then introduced bills of sale of the steamboat and barge from the Northwestern Packet Company to the Northwestern Union Packet Company, the claimant, and rested.

Record, pp. 14 to 18.

On the 13th day of September, 1869, the District Court decreed, dismissing the libel.

Record, p. 18.

The libellant appealed to the Circuit Court.

Record, pp. 18 to 20.

At the November term, 1870, the cause was heard on appeal by His Honor Judge Drummond, on the record from the District Court and additional testimony.

Record, p. 20.

The libellant introduced Wm. Young, who gave testimony tending to show that after the loss he negotiated with the officers of the Northwestern Packet Company in relation to the loss.

Record, pp. 21 to 27.

James C. Spencer testified that the Northwestern Packet Company sold all its property to the Northwestern Union Packet Company, May 1st, 1866.

Record, pp. 27 and 28.

William Rhodes, secretary ot the Northwestern Union Packet Company, testified in relation to the transfer, the organization of the claimant, and the transactions of claimant.

Record, pp. 30 to 43.

The Circuit Court on the hearing affirmed the decree of the District Court.

The record, therefore, shows that the loss occurred May 20th, 1864. That the steamboat and barge were then owned by the Northwestern Packet Company; that they remained the property of said company until May 1st, 1866, and were all that time

engaged in the navigation of the waters of the Upper Mississippi, and frequently within the jurisdiction of the District Court of Wisconsin; that on said first day of May, 1866, they were, for a valuable consideration, transferred to the present claimant; that the libel was filed November 22d, 1867, and process served April 7th. 1868. On these facts we insist:

I.

That if the libellant ever had a maratime lien which could be enforced in Admiralty by a proceeding *in rem*, against said steamboat and barge, he allowed the same to become stale by his delay in enforcing the same, and that it was wholly lost by said delay, so that it cannot now be enforced against said steamboat, as against the rights of the claimant.

"It has been decided that neither the statute of Anne limiting suits in the English admiralty, nor the statute of limitations of any of our States, is of any force in our admiralty. Whether a claim is to be considered stale or not must depend upon the peculiar circumstances of each particular case, and it is difficult to lay down any general rule. It is, however, we think, evident that a party may have a suit *in personam*, when he cannot sue *in rem;* because in this latter case, the rights of a bona fide purchaser may intervene. If the vessel remains in the hands of the owners who were in possession at the time the debt accrued, an action may be brought after a considerable lapse of time. But if the vessel has been sold to a *bona fide* purchaser, the suit should be brought as soon as an opportunity is presented; and if it is not, a delay is fatal."

2 Parson's Maratilme Law, 663.

Where a party proposes to proceed *in rem* in admiralty, the proceeding should be instituted within a reasonable time, and when such reasonable opportunity has been afforded after the claim arises, any further delay will prove fatal to the claimant, if the property changes hands so that a *bona fide* purchaser will be injured by the subsequent enforcement of the lien. These liens

are secret, not accompanied by possession, and there is no record of them, as in the case of chattel mortgages or other liens on personal property, therefore the complainant must be diligent in enforcing it, and no great delay can be tolerated, where the rights of other partics are involved.

This precise question has been frequently before our Courts of Admiralty.

In the case of the *Admiral*, decided by Judge Sprague and reported in 18 Law Reporter, 91. The question here involved was fully considered and decided. That was a case of collision, which occurred October 7th, 1852, and the libel was filed July 1st, 1854, twenty months after, during all of which time the *Admiral* was plying between Boston and St. Johns, and in the meantime the *Admiral* had changed hands. The judge in that case says: "It may be if third persons had not become interested in the *Admiral* this libel might be maintained, although I am not prepared to say that I should hold that the lien still remained upon the vessel if there had been no change of ownership. If the boat still remained the property of her former owners, it would perhaps be a matter of no concern to them whether they were sued *in personam*, or whether the boat was seized. If the delay operated to prejudice them in any way, I am not certain but the lien ought not to be held to have been lost." Again, he says: "The rule adopted in Courts of Admiralty, is to allow the continuance of the lien until a reasonable opportunity is given to enforce it. If a party neglects to avail himself of it, third persons are not to be prejudiced by his delay."

In Packard vs. the sloop *Louisa*, 2 Woodberry & Minot, 48, the libel was for a seaman's wages, and was filed in November, 1845, for wages due to him for services on board of her, commencing in March, 1842, and ending in November after. Mr. Justice Woodberry decided the case on appeal to the Circuit Court, affirming the decree dismissing the libel, on the ground "of the long delay to resort to the vessel, and when, in the meantime, the owners had changed and one of them become insolvent." His discussion of this question on pages 55 to 63 of the volume and fully sustains the position of the claimant in this

case. See, also, Leland et al. vs. Medora, 2 Woodberry & Minot, 92; see page 104.

The Scow Bolivar. 1 Olcott, 474.

In the Buckeye State, 1 Newberry, 111, it was held that a delay of three years to enforce a lien by a material man, was a bar to recovery, and the libel was dismissed for that reason, a third person in the meantime having become the owner of the boat.

In Bryant vs. Brig Lillie Mills, 18 Law Reporter, 494, supplies were furnished in March, June and October, 1853, and the libel was filed October, 1855. Judge Sprague says: "If there had been no transfer of the property, I should hold the lien was not lost. When the rights of third persons have intervened, the lien will be regarded as lost, if tho person in whose favor it existed has had a reasonable opportunity to enforce it, and has not done so. This is the well-settled rule in admiralty."

In the General Jackson, 17 Law Reporter, 324, the supplies were furnished September, 1852. The vessel was sold to claimant in May, 1854, and libel filed about eighteen months after supplies furnished. Judge Sprague says: "During all that period the vessel was plying between this port and the ports of Maine, as often as once a month, giving the libellant ample opportunity to enforce his claim, had he seen fit, long before the sale of the vessel to the present claimant. It must, therefore, be held that the libellant has waived his lien."

In the case at bar, nearly two years elapsed after the loss before the transfer to claimant, and about three and a half before the libel was filed. None of the cases abovo cited show as great delay in attempting to enforce the lien. No excuse for the delay is shown, and pending this delay the boat was transferred to the claimant, without notice of the pretended lien. The case is, therefore within the authorities, and the libel was rightfully dismissed.

II.

The transfer of the boat and barge to the claimant was a legal and *bona fide* transfer, and was in no way impeached by the testimony taken on appeal in the Circuit Court.

The Northwestern Packet Company was a corporation organized under the laws of the State of Iowa.

There was another packet company, known as the La Crosse and Minnesota Steam packet Company, organized under the laws of the State of Wisconsin.

These companies were entirely separate and distinct companies, hostile and rivals, and had no connection with each other, and the stockholders of one were not stockholders in the other.

On the first day of May, 1866, a third company was organized, under the laws of the State of Iowa, called the Northwestern Union Packet Company, the complainant. This last company bought of the other two packet companies, all their boats and barges, including the boat and barge in question, at an appraisal agreed upon, and paid for the same in the stock of the new company, which was delivered in payment of their respective properties, at par for the property, in proportion to its appraised value. The stock of the new company that was issued to pay for the property of the La Crosse and Minnesota Steam Packet Company's property was delivered to that company, but that going to the Northwestern Company was issued to the individual stockholders of that company, but with an endorsement thereon that no dividends would be payable thereon until all debts of the said Northwestern Packet Company had been paid out of one-third of the net earnings of the Northwestern Union Packet Company, which was in accordance with the terms of the bill of sale.

Record, pp. 30 to 43.

These details were all called out in testimony taken in the Circuit Court. They in no manner affect the question at issue. The only question is, was there a *bona fide* change of ownership of this particular boat, the Key City, on the first day of May, 1866? Of this there can be no question. Prior to that time it was owned by the Northwestern Packet Company; after that it was owned by the Northwestern Union Packet Company, an entirely different corporation, with different stockholders, and holding their interests in different proportions. There is no pretense that any notice of this lien was given to the new company, or that they ever had any knowledge of it until the marshal took possession of the boat. The two old companies re-

mained corporations, legal existences, notwithstanding the formation of the new company and the sale to it of this property. There was no consolidation or legal union of the two, and how such a union could take place between corporations of different States, is not quite clear. The old companies remained liable to suit and liable for their debts, and the individual stockholders were also liable if they had appropriated the property of the company. The sale was an actual and *bona fide* sale, and has never been questioned. It was not colorable or fraudulent. The property of the Northwestern Packet Company was paid for in stock of the new company, which was a good and valid payment, as much so as if paid in money. The new company was to pay the debts of the old out of the earnings of the new, in certain proportions, but in no other way. Dividends were withheld and applied for that purpose.

The Northwestern Union Company were liable to the creditors of the old company, according to the terms of their contract, but in no other manner.

To allow this suit to prevail would affect the rights, stock and property of all the stockholders unjustly and inequitably. The new company cannot be subjected to this proceeding.

The claimant could be compelled to appropropriate net earnings belonging to the Northwestern Company or to the stockholders who were of that company, after a debt had been established.

The libellant could have pursued the Northwestern Company, and after judgment its stockholders, for the stock held in the new company.

It follows, therefore, that there was a legal, valid and *bona fide* sale of this boat to the claimant, May 1st, 1866, for a valuable consideration, without notice of this claim. Hence the libellant has no right to maintain this suit against the claimant, and the question of staleness of his claim is not affected by these facts.

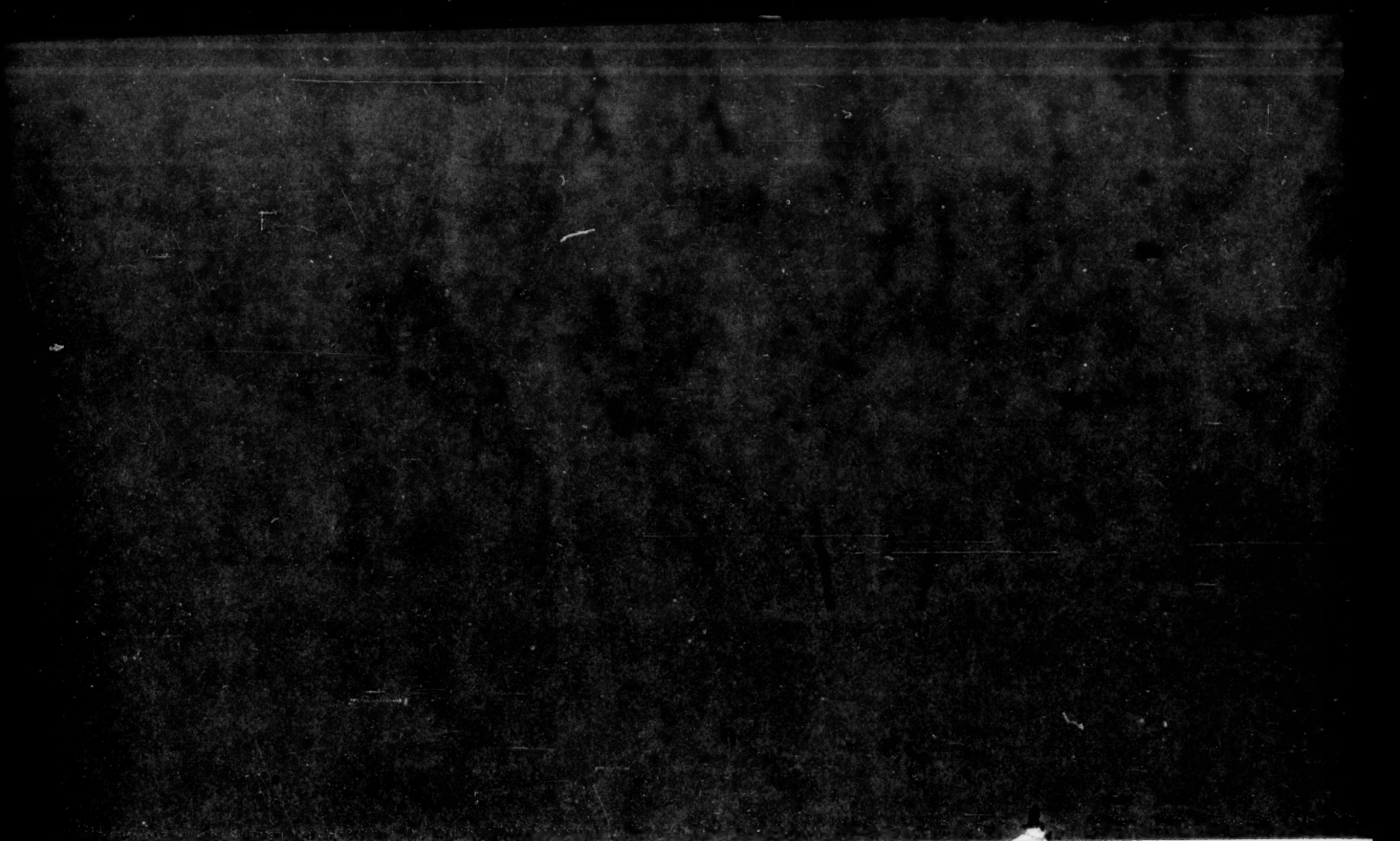
This boat became the property of the new company May 1st, 1866. A bill of sale was made out, an acknowledgment of the receipt of the consideration, and a delivery of the vessel and the bill of sale was duly recorded. This makes a good title to the claimants.

The case of the *Admiral*, already cited, is authority upon this point. In that case, after the collision the *Admiral* was sold by e owners to a stock company, and stock in the company given in payment to the former owners. On this point the court say:

"It is said all the former owners of the *Admiral* were stockholders in the claimant's company, and thus the corporation is affected with knowledge of this lien. It does not appear that they owned in the company in the same proportion as before, and if it did, it would make no difference, because there were other stockholders in the company who took in ignorance of the claim, and they ought to be protected. The former owners became merely stockholders in the new company, and their knowledge does not affect the corporation with knowledge.

The difficulty is, that as this is a process *in rem*, and the boat the property of the corporation, there is no process to reach the interests of the former owners without affecting the interests of others who purchased innocently.

The boat is now owned by a corporation and not by indivuals. The persons owning do not own as before any part or rights in the boat, but they own stock in the company."

So, too, Mr. Justice Woodberry, in Packard vs. Louisa, already cited, says the libel must be dismissed because "of the long delay to resort to the vessel, and when in the meantime the owners had changed, and one of them become insolvent," clearly showing that such liens cannot be enforced after such a lapsetime, of when any change had taken place that would make it unjust to any of the parties to enforce it. I therefore submit that the decree of the Circuit Court should be affirmed.

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